

*The*  
NORTH CAROLINA  
**REGISTER**

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**ISSUE DATE: NOVEMBER 15, 1991**

**Volume 6 • Issue 16 • Pages 1108-1275**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N.C. 27611-7447, Attn: Subscriptions.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for pages or less, plus fifteen cents (\$0.15) per additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement parts. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased through supplement service. Renewal subscriptions are available to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, page number and date. 1:1 NCR 101-201, April 1, 1991 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1991.

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# **NORTH CAROLINA REGISTER**



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**NORTH CAROLINA REGISTER**  
*Publication Schedule*  
*(October 1991 - December 1992)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
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10 15 91	09 24 91	10/01/91	10/30/91	11 14 91	11/20/91	01/02/92
11 01 91	10 11/91	10 18/91	11/16/91	12 01 91	12/20/91	02 03/92
11 15 91	10 24 91	10 31/91	11/30/91	12 15 91	12/20/91	02 03 92
12 02 91	11 07 91	11 14/91	12/17/91	01 01/92	01/20/92	03/02/92
12 16 91	11 21 91	12 02/91	12 31/91	01 15/92	01 20/92	03 02 92
01 02 92	12 09 91	12/16/91	01 17/92	01 31/92	02/20/92	04 01/92
01 15 92	12 20 91	12/31/91	01 30/92	02 14/92	02/20/92	04 01/92
02 03 92	01 10 92	01/17/92	02 18/92	03 04/92	03 20/92	05 01/92
02 14 92	01 24 92	01/31/92	02 29/92	03 15/92	03/20/92	05 01 92
03 02 92	02 10 92	02 17/92	03/17/92	04 01 92	04 20/92	06 01 92
03 16 92	02 24 92	03 02/92	03 31/92	04 15/92	04 20/92	06 01/92
04 01 92	03 11 92	03 18/92	04 16/92	05 01 92	05 20/92	07 01/92
04 15 92	03 25 92	04 01/92	04 30/92	05 15/92	05/20/92	07 01 92
05 01 92	04 10 92	04 17/92	05 16/92	05 31/92	06/20/92	08 03/92
05 15 92	04 24 92	05 01/92	05 30/92	06 14/92	06/20/92	08 03/92
06 01 92	05 11 92	05 18/92	06 16/92	07 01 92	07/20/92	09 01/92
06 15 92	05 25 92	06 01/92	06/30/92	07 15/92	07/20/92	09 01/92
07 01 92	06 10 92	06 17/92	07 16/92	07 31/92	08 20/92	10 01 92
07 15 92	06 24 92	07/01/92	07 30/92	08 14/92	08 20/92	10 01 92
08 03 92	07 13 92	07 20/92	08 18/92	09 02/92	09/20/92	11 02/92
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09 01 92	08 11 92	08 18/92	09 16/92	10 01/92	10 20/92	12 01/92
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12 15 92	11 24 92	12 01/92	12 30/92	01 14 93	01 20/93	03 01 93

\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

## ***PROPOSED RULES***

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### **TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Economic and Community Development, Credit Union Division intends to amend rule(s) cited as 4 NCAC 6C .0407.*

*The proposed effective date of this action is February 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on December 2, 1991 at 1110 Navaho Drive, Raleigh, NC 27609.*

*Reason for Proposed Action: Rule changes are needed to allow state credit unions to operate under state rules and regulations in lieu of federal rules and regulations.*

*Comment Procedures: Request to be heard will be received up to 48 hours prior to the December 2, 1991 hearing. Written comments will be received for 30 days after publication.*

### **CHAPTER 6 - CREDIT UNION DIVISION**

#### **SUBCHAPTER 6C - CREDIT UNIONS**

##### **SECTION .0400 - LOANS**

###### **.0407 BUSINESS LOANS**

(a) Ten Percent Limit. No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the North Carolina Credit Union upon loans and advances made to the member in aggregate amount exceeding 10 percent of the Credit Union's total unimpaired shares and surplus. In the case of member business loans, as herein defined, additional limitations apply as set forth in this Rule.

(b) Prohibited Fees. A North Carolina credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the Credit Union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary (except commissions) for employees is not prohibited by this Section. For purposes of this Section, "senior management employees" means the

Credit Union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller), and "immediate family member" means a spouse or other family member living in the same household.

(c) Nonpreferential Treatment. The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by:

- (1) an official,
- (2) an immediate family member or an official, or
- (3) any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official,

shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means a spouse or other family member living in the same household.

(d) **Member Business Loans**

(e) **Definitions**

(i) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except that the following shall not be considered member business loans for purposes of this Section:

- (ii) A loan that is fully secured by a lien on a one to four family dwelling that is:
  - (I) the member's primary residence; or
  - (II) the member's secondary residence; or
  - (III) one other such dwelling owned by the member.

(iii) A loan that is fully secured by shares in the Credit Union or deposits in other financial institutions.

(iv) A loan, the proceeds of which are used for a commercial, corporate, business, or agricultural purpose, made to a borrower or an associate member (as defined herein), which, when added to other such loans to the borrower or associated member, is less than twenty-five thousand dollars (\$25,000).

(v) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal government or of a state or any of its political subdivisions.

## PROPOSED RULES

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- (B) "Reserves" means all reserves, including the Allowance for Loan Losses account, and undivided earnings or surplus.
- (C) "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.
- (D) "Immediate Family Member" means a spouse, or other family member living in the same household.
- (2) Requirements. A North Carolina credit union may make member business loans only in accordance with the applicable provisions of this and all other Rules promulgated by the North Carolina Credit Union Administrator, including the following requirements:
- (A) Written Loan Policies. The Board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:
- (i) Types of business loans that will be made.
  - (ii) The Credit Union's trade area for business loans.
  - (iii) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans.
  - (iv) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.
  - (v) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members as herein defined.
  - (vi) Qualifications and experience of personnel involved in making and administering business loans.
  - (vii) Analysis of the ability of the borrower to repay the loan.
  - (viii) The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the Credit Union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses; and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.
  - (ix) Collateral requirements, including loan to value ratios; appraisal; title

- search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.
- (x) Appropriate interest rates and maturities of business loans.
- (xi) Loan monitoring, servicing and follow up procedures, including collection procedures.
- (xii) Provision for periodic disclosure to the Credit Union's member of the number and aggregate dollar amount of member business loans.
- (xiii) Identification, by position, of those senior management employees prohibited from receiving member business loans by Section (e) of this Rule.
- (B) Business Loans to One Borrower. Unless a greater amount is approved by the North Carolina Credit Union Administrator, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20 percent of the Credit Union's reserves. If any portion of a member business loan is fully secured by a one to four family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member, or by shares in the Credit Union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20 percent limit. Credit unions seeking an exception from the 20 percent limit must present the Administrator with, at a minimum: the higher limit sought; an explanation of the need to raise the limit; an analysis of the Credit Union's prior experience making member business loans; and a copy of its business lending policy.
- (C) Allowance for Loan Losses.
- (i) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(ii) Loans classified shall be reserved as follows:

(I) Substandard loans at ten percent of outstanding amount unless other factors (e.g., history of such loans at the Credit Union) indicate a greater or lesser amount is appropriate. Loans classified as substandard loans are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the Credit Union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(II) Doubtful loans at 50 percent of outstanding amount. Loans classified as doubtful loans have all the weaknesses inherent in ones classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

(III) Loss loans at 100 percent of outstanding amount. Loans classified as loss loans are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though

partial recovery may occur in the future.

(c) Member Business Loan Prohibitions.

- (1) Senior Management Employees. A North Carolina credit union may not make member business loans to the following non volunteer, senior management employees, or to any associated member or immediate family member of such employees:
- (A) Any member of the Board of Directors who is compensated as such.
  - (B) The Credit Union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).
  - (C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).
  - (D) The chief financial officer (Comptroller).
- (2) "Equity Kickers." A North Carolina credit union shall not grant a member business loan where a portion of the amount of income to be received by the Credit Union in conjunction with such loan is tied to the profit of the business or commercial endeavor for which the loan is made.

(d) Effective Date.

- (1) This Rule is effective as of January 1, 1988. On and after that date, a North Carolina credit union may make member business loans only after adopting and implementing written loan policies as required by this Rule. All member business loans made on or after that date must be in full compliance with this Rule.
- (2) On or before January 1, 1988, a North Carolina credit union must notify the North Carolina Credit Union Administrator, in writing, of any outstanding member business loans made prior to that date that do not satisfy the requirement of this Rule.

(d) Member Business Loans.

(1) Definitions.

(A) Member business loans mean any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agriculture purpose, except that the following shall not be considered member business loans for purposes of this Section:

(i) A loan or loans fully secured by a lien on a one to four family dwelling that is the member's primary residence.

- (ii) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.
- (iii) A loan meeting the general definition of member business loans under Subparagraph (d)(1)(A) of this Rule, and, made to a borrower or an associated member [as defined in Subparagraph (d)(1)(C) of this Rule], which, when added to other such loans to the borrower or associated member, is less than twenty-five thousand dollars (\$25,000).
- (iv) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.
- (v) A loan granted by a corporate credit union operating under the provisions of the North Carolina General Statutes to another credit union.
- (B) Reserves means reserve fund, undivided earnings, current earnings, and excludes the Allowance for Loan Losses.
- (C) Associated Member means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.
- (D) Immediate Family Member means a spouse, or other family member living in the same household.
- (E) Loan-to-value (LTV) ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.
- (F) Construction or development loan means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.
- (2) Requirements. Member business loans, as defined in Subparagraph (d)(1) of this Rule may be made by credit unions only in accordance with the applicable provisions of Paragraphs (a) thru (c) of this Rule and the following additional requirements:
- (A) Written loan policies. The Board of Directors must adopt specific business loan policies and review them at least an-

- nually. The policies shall, at a minimum, address the following:
- (i) Types of business loans that will be made;
- (ii) The credit union's trade area for business loans;
- (iii) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans;
- (iv) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;
- (v) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to Subparagraph (d)(2)(C)(i) of this Rule;
- (vi) Qualifications and experience of personnel involved in making and administering business loans with a minimum of two years direct experience with this type of lending;
- (vii) Analysis of the ability of the borrower to repay the loan;
- (viii) Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall (except where the Board of Directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies) include the following: balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;
- (ix) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;
- (x) Appropriate interest rates and maturities of business loans;
- (xi) Loan monitoring, servicing and follow-up procedures, including collection procedures;
- (xii) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans;

- (xiii) Identification by position of those senior management employees prohibited by Subparagraph(h)(3) of this Rule from receiving member business loans.
- (B) Other policies. The following minimum limits and policies shall also be established in writing and reviewed at least annually for loans granted under this Section:
- (i) Loans shall be granted on a fully secured basis by collateral as follows:
    - (I) Second lien for LTV ratios of up to 70 percent;
    - (II) First lien for LTV ratios of up to 80 percent;
    - (III) First lien with an LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;
  - (ii) Loans shall not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501);
  - (iii) All loans to non-natural persons, except to other credit unions, must be secured as required in Chapter 54-109.27 of the North Carolina General Statutes.
- (C) Loan Limits.
- (i) Loans to one borrower. Unless a greater amount is approved by the Administrator, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 15 percent of the credit union's reserves (less the Allowance for Loan Losses account), or seventy five thousand dollars (\$75,000) whichever is higher. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the fed-
- eral government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15 percent limit.
- (ii) Exceptions. Credit unions seeking an exception from the limits of Subparagraph (d)(2)(C)(i) or (d)(3) of this Rule must present the Administrator of Credit Unions with, at a minimum; the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account), underwriting standards and practices, types of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. The credit union must have written approval of the Administrator of Credit Unions to exceed the limitations contained in this Rule.
  - (iii) Maturity. Member business loans shall be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.
  - (iv) Monitoring requirement. Credit unions with member business loans in excess of 100 percent of reserves (less the Allowance for Loan Losses account) shall submit the following information regarding member business loans to the Administrator on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of 30 days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account); the total number and amount of all construction, development or speculative loans; and any

- other information pertinent to the safe and sound condition of the member business loan portfolio.
- (D) Allowance for loan losses.
- (i) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified depending on an evaluation of factors, including but not limited to, the adequacy of analysis and documentation.
- (ii) Loans classified shall be reserved as follows:
- (I) Substandard loans at ten percent of outstanding amount unless other factors (e.g., history of such loans at the Credit Union) indicate a greater or lesser amount is appropriate. Loans classified as substandard loans are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the Credit Union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.
- (II) Doubtful loans at 50 percent of outstanding amount. Loans classified as doubtful loans have all the weaknesses inherent in ones classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on addi-

- tional collateral, and refinancing plans.
- (III) Loss loans at 100 percent of outstanding amount. Loans classified as loss loans are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.
- (3) Construction and development lending. Loans granted under this Section to finance the construction or development of commercial or residential property shall be subject to the following additional provisions:
- (A) The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a State or any of its political subdivisions, shall not exceed 15 percent of reserves (less the Allowance for Loan Losses account);
- (B) The borrower shall have a minimum of 35 percent equity interest in the project being financed;
- (C) Funds for such projects shall be released following on-site inspections by independent, qualified personnel in accordance with a preapproved draw schedule.
- (4) Prohibitions.
- (A) Senior management employees. A credit union may not make member business loans to the following:
- (i) Any member of the Board of Directors who is compensated as such;
- (ii) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer Manager);
- (iii) Any assistant chief executive officers (e.g., Assistant President, Vice-President or Assistant Treasurer Manager);
- (iv) The chief financial officer (Comptroller);
- (v) Any associated member or immediate family member of the senior manage-

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ment employees listed in Subparagraphs (d)(4)(A)(i) thru (iv) of this Rule.

(B) Equity kickers/joint ventures. A credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(5) Recordkeeping. All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agriculture purpose, shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the Administrator.

Statutory Authority G.S. 54-109.12; 54-109.21(25); 54-109.78; Federal Regulation NCUA 741.3.

### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Office of the Secretary intends to amend rule(s) cited as 10 NCAC 1C .0603.*

*The proposed effective date of this action is February 1, 1992.*

*Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): Public hearing may be demanded in writing to Steven P. Rader, General Counsel, 101 Blair Drive, Raleigh, NC 27603 by November 30, 1991.*

*Reason for Proposed Action: To establish criteria for reduction of disallowed costs to local Human Resources agencies.*

*Comment Procedures: Written comments should be submitted to Steven P. Rader, General Counsel, 101 Blair Drive, Raleigh, NC 27603 by December 15, 1991.*

### CHAPTER 1 - DEPARTMENTAL RULES

#### SUBCHAPTER 1C - PERSONNEL

### SECTION .0600 - VIOLATIONS OF PERSONNEL RULES AND REGULATIONS BY LOCAL HUMAN RESOURCES AGENCIES

#### .0603 WITHDRAWAL

(a) All personnel funds concerning salaries and fringe benefits whether state or federal provided by or through the Department of Human Resources which are associated with the position(s) declared to be out-of-compliance will be permanently withheld or withdrawn from the agency from the beginning date of the non-compliance until the date of notice of non-compliance. The originating agency will be advised that the situation must be rectified within 60 calendar days from the date of notice of non-compliance. All state or federal personnel funding for the affected position(s) also will be permanently withheld for that portion of the 60-day period in which the matter is unresolved and until the matter is declared to be in compliance by the regional personnel director.

(b) If the situation is not corrected in accord with applicable personnel and fiscal requirements by the end of the 60-day period, the appropriate program division director will declare the agency "out-of-compliance". An agency so declared will be denied all state and federal personnel funds provided by or through the Department of Human Resources for the full period during which the agency is in "out-of-compliance" status. The declaration will be rescinded by the responsible program division director when the proposed resolution is certified consistent with the applicable state personnel policy and rules by the Director, Division of Personnel Management Services.

(c) The Secretary of the Department of Human Resources may reduce the amount of disallowed costs to be repaid where clerical or administrative errors have created the out-of-compliance, rather than situations involving qualifications or certifications of personnel to perform assigned tasks.

Statutory Authority G.S. 143B-139.1.

### TITLE 11 - DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 12 .0548, .0815 - .0816, .0818 - .0822, .0824 - .0830, .0834; adopt rule(s) cited as 11 NCAC 12 .0835 - .0838; and repeal rule(s) cited as 11 NCAC 12 .0823, .0831 - .0833.*

*The proposed effective date of this action is February 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on December 5, 1991 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Reason for Proposed Action: To conform with recent legislation enacted by Congress.*

*Comment Procedures: Written comments may be sent to Laurie Saxton, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Laurie Saxton at (919) 733-5060, or Ellen Sprenkel at (919) 733-4529.*

*Editor's Note: These Rules have been filed as temporary rules effective October 16, 1991 for a period of 180 days to expire on April 13, 1992.*

## **CHAPTER 12 - LIFE AND HEALTH DIVISION**

### **SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE**

#### **.0548 INSURANCE FOR MEDICARE ELIGIBLE**

(a) Direct response insurers providing accident and health insurance to persons eligible for Medicare by reason of age shall: Each insurer shall provide to all prospective purchasers of accident and health insurance who are eligible for Medicare by reason of age or who currently receive Medicare a copy of the current edition of the NAIC-HHS Guide to Health Insurance for People with Medicare and the North Carolina Buyer's Guide to Health Insurance and Medicare and Medicaid at the beginning of any sales presentation. The Private Insurance Checklist contained in the NAIC-HHS Guide shall be properly completed prior to the time the prospective purchaser is provided an application for a policy.

(b) Each insurance agency, agent, broker, and producer of record shall certify that the prospective purchaser has received a North Carolina Buyer's Guide and a properly completed NAIC-HHS Guide. This certification shall be submitted with the application to the insurer.

(c) Insurers that do not market through an agent are exempt from Paragraph (a) and (b) of this Rule and shall provide at the time of policy delivery a North Carolina Buyer's Guide and a NAIC-HHS Guide with the Private Insurance Checklist completed for their policy, provided they:

(1) guarantee to the policyholder an unconditional 30 day right to return the policy for a full refund of premium; and

(2) alert the prospective policyholder, policyholders, in advertisements or direct mail solicitations, of his or her their right to obtain a copy of the North Carolina Buyer's Guide and the NAIC-HHS Guide to Health Insurance for People with Medicare prior to sale.

(d) Each insurer shall provide a North Carolina Buyer's Guide to Health Insurance and Medicare and Medicaid and the NAIC-HHS Guide to Health Insurance for People with Medicare upon request.

(e) Each insurer All insurers providing accident and health insurance to persons eligible for Medicare by reason of age shall annually report to the Commissioner the number of written complaints or inquiries it receives received from its accident and health insurance these policyholders who are eligible for Medicare.

(f) This Regulation shall not apply to group accident and health policies as defined in G.S. 58-254.1 or to conversion coverages or privileges held by an insured.

(g) The 10 day right to return the policy for a full refund of premium or the 30 day right to return as prescribed in Paragraph (e), if benefits are not used, shall begin with the delivery of the policy or of a properly completed NAIC-HHS Guide, whichever is later.

*Statutory Authority G.S. 58-2-40; 58-2-190; 58-2-195; 58-3-100; 58-3-115; 58-3-150; 58-51-1; 58-51-15; 58-51-60; 58-51-85; 58-51-95; 58-54-1; 58-63-15; 58-65-1; 58-65-4; 58-65-105.*

### **SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE**

#### **.0815 PURPOSE AND DEFINITIONS**

(a) The purpose of these Rules this Section is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare Supplement Policies; supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare. by reason of age.

(b) For purposes of this Section:

- (1) "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.
- (2) "Issuer" includes an insurance company, fraternal benefit society, hospital or medical service plan, health maintenance organization, or any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.
- (3) "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

*Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25.*

**.0816 APPLICABILITY AND SCOPE**

(a) Except as otherwise specifically provided in 11 NCAC 12 .0820, 12 .0821, 12 .0822 and 12 .0823, 12 .0829, this Section applies to:

- (1) All Medicare Supplement Policies and subscriber contracts supplement policies delivered or issued for delivery in this state on or after the effective date of this Section, and
  - (2) All certificates issued under group Medicare Supplement Policies or subscriber contracts supplement policies, which certificates have been delivered or issued for delivery in this state.
- (b) This Section does not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members, or a combination thereof, of the labor organizations.

*Statutory Authority G.S. 58-2-40; 58-54-5.*

**.0818 POLICY DEFINITIONS AND TERMS**

No insurance policy or subscriber contract certificate may be advertised, solicited or issued for delivery in this state as a Medicare Supplement Policy supplement policy or certificate unless such policy or subscriber contract certificate contains definitions or terms which conform to the requirements of this Section.

- (1) "Accident", "Accidental Injury", or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for

which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

- (b) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, unless prohibited by law.
- (2) "Benefit Period" or "Medicare Benefit Period" shall not be defined as more restrictively than as that defined in the Medicare program.
- (3) "Convalescent Nursing Home", "Extended Care Facility", or "Skilled Nursing Facility" shall not be defined in relation to its status, facilities and available services more restrictively than as defined in the Medicare program.
- (4) A definition of such home or facility shall not be more restrictive than one requiring that it:
  - (i) be operated pursuant to law;
  - (ii) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
  - (iii) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
  - (iv) provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and
  - (v) maintain a daily medical record of each patient.
- (5) The definition of such home or facility may provide that such term not be inclusive of:
  - (i) any home, facility or part thereof used primarily for rest;
  - (ii) a home or facility for the aged or for the care of drug addicts or alcoholics; or
  - (iii) a home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.
- (4) "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. Such expenses shall not include:
  - (a) home office and overhead costs;
  - (b) advertising costs;

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- (c) commissions and other acquisition costs;
  - (d) taxes;
  - (e) capital costs;
  - (f) administrative costs; ~~or and~~
  - (g) claims processing costs.
- (5) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but
- (a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital as defined in the Medicare program.
  - (i) be an institution operated pursuant to laws and
  - (ii) be primarily and continuously engaged in providing or operating either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charge is made; and
  - (iii) provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s).
- (b) The definition of the term "hospital" may state that such term shall not be inclusive of:
- (i) convalescent homes, convalescent, rest or nursing facilities; or
  - (ii) facilities primarily affording custodial, educational or rehabilitation care; or
  - (iii) facilities for the aged, drug addicts or alcoholics; or
  - (iv) any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.
- (6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.
- (7) "Medicare Eligible Expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.
- (8) "Mental or Nervous Disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.
- (9) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as Registered Graduate Professional Nurse (R.N.), a Licensed Practical Nurse (L.P.N.), or a Licensed Vocational Nurse (L.V.N.). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.
- (10) "Physician" may shall not be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable law, more restrictively than as defined in the Medicare program.
- (9) (11) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means sickness illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Statutory Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

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### .0819 POLICY PROVISIONS

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(a) Except for permitted pre-existing condition clauses as described in 11 NCAC 12 .0820(1)(a) and 11 NCAC 12 .0835(1)(a), no ~~No insurance policy or subscriber contract certificate~~ may be advertised, solicited or issued for delivery in this state as a Medicare Supplement Policy ~~supplement policy~~ if such policy or ~~certificate~~ contains limitations or exclusions on coverage that are more restrictive than those of Medicare. ~~subscriber contract limits or excludes coverage by type of illness, accident, treatment or medical condition, except as follows:~~

- (1) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;
- (2) mental or emotional disorders, alcoholism and drug addiction;
- (3) illness, treatment or medical condition arising out of:
  - (A) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;
  - (B) suicide ( sane or insane), attempted suicide or intentionally self inflicted injury;
  - (C) aviation;
- (4) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;
- (5) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column;
- (6) treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
- (7) dental care or treatment;
- (8) eye glasses, hearing aids and examination for the prescription or fitting thereof;

(9) rest cures, custodial care, transportation and routine physical examinations;

(10) territorial limitations outside the United States;  
~~provided, however, supplemental policies may not contain, when issued, limitations or exclusions of the type enumerated in Paragraphs (a) (1), (5), (9), or (10) of this Rule that are more restrictive than those of Medicare. Medicare Supplement Policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.~~

(b) No Medicare Supplement Policy ~~supplement policy or certificate~~ may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) The terms "Medicare Supplement", "Medigap" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

(c) (d) No Medicare Supplement Insurance Policy, ~~contract supplement policy or certificate~~ in force in the state shall contain benefits which duplicate benefits provided by Medicare.

*Statutory Authority G.S. 58-2-40; 58-54-10.*

### .0820 MINIMUM BENEFIT STANDARDS BEFORE JANUARY 1, 1992

No ~~insurance policy or subscriber contract certificate~~ may be advertised, solicited or issued for delivery in this state as a Medicare ~~Supplement Policy~~ which does not meet ~~supplement policy or certificate~~ unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General Standards. The following standards apply to Medicare ~~Supplement Policies~~ ~~supplement policies and certificates~~ and are in addition to all other requirements of this regulation.

- (a) A Medicare ~~Supplement Policy~~ ~~may supplement policy or certificate~~ shall not deny a claim exclude or limit benefits for losses loss incurred more than six months from the effective date of coverage ~~for~~ because it involved a preexisting condition. The policy or ~~certificate~~ shall ~~may~~ not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

- (b) A Medicare Supplement Policy may supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
- (c) A Medicare Supplement Policy supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
- (d) A "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable" Medicare Supplement Policy supplement policy shall not:
- (i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
  - (ii) be cancelled or nonrenewed by the insurer issuer solely on the grounds of deterioration of health.
- (e) Except as authorized by the Commissioner of this state, an insurer issuer shall neither cancel nor nonrenew a Medicare Supplement supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
- (f) If a group Medicare Supplement insurance supplement policy is terminated by the group policyholder and not replaced as provided in Subparagraph (1) (h) of this Rule, the insurer issuer shall offer certificate holders an individual Medicare Supplement supplement policy. The insurer issuer shall offer the certificateholder at least the following choices:
- (i) an individual Medicare Supplement supplement policy which provides for continuation of the benefits contained in the group policy, and currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy;
  - (ii) an individual Medicare Supplement supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 11 NCAC 12 .0535(2).
- (g) If membership in a group is terminated, the insurer issuer shall:
- (i) offer the certificateholder such conversion opportunities as are described in Subparagraph (1) (f) of this Rule; or
- (ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (h) If a group Medicare Supplement supplement policy is replaced by another group Medicare Supplement supplement policy purchased by the same policyholder, the succeeding insurer issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.
- (i) Termination of a Medicare Supplement Policy supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.
- (2) Minimum Benefit Standards.
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
  - (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
  - (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
  - (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
  - (e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;
  - (f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part

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- B deductible [seventy five dollars (\$75.00)] maximum benefit. [one hundred dollars (\$100.00)]. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within this provision;
- (g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

(3) **Medicare Eligible Expenses.** Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

*Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.*

### .0821 STANDARDS FOR CLAIMS PAYMENT

(a) Every entity providing Medicare Supplement Policies or contracts An issuer shall comply with all provisions of Section 1882(c)(3) of the Social Security Act [as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987). (P.L. 100-203)] by:

- (1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;
- (2) Notifying the participating physician or supplier and the beneficiary of the payment determination;
- (3) Paying the participating physician or supplier directly;
- (4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

- (5) Paying user fees for claim notices that are transmitted electronically or otherwise; and
  - (6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.
- (b) Compliance with the requirements set forth in Paragraph (a) of this Rule must shall be certified on the Medicare Supplement supplement insurance experience reporting form.

*Statutory Authority G.S. 58-2-40; 58-54-15.*

### .0822 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM

#### (a) Loss Ratio Standards:

(1) A Medicare Supplement Policies shall return to policyholders in the form of aggregate benefits under the policy, supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices; to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(A) (1) At least 75 percent of the aggregate amount of premiums earned in the case of group policies, and or

(B) (2) At least 65 percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that actual and expected losses claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions

- shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.
- (b) Refund or Credit Calculation:
- (1) An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the reporting form for each type in a standard Medicare supplement benefit plan. The reporting form shall be in the format prescribed by the NAIC in Appendix A of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file at the North Carolina Department of Insurance. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.
- (2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.
- (3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.
- (e) Annual Filing of Premium Rates. An issuer of (3) Every entity providing Medicare Supplement Policies supplement policies and certificates issued in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration, for approval by the Commissioner in accordance with the filing requirements and pro-

cedures prescribed by statute or rule. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years, demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience. For the purposes of this Section, policy forms shall be deemed to comply with the loss ratio standards if:

- (a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this Section; and
- (b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this Section. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.
- (4) As soon as practicable, but prior to the effective date of enhancements in Medicare benefit changes, benefits, every insurer, health care service plan or other entity providing issuer of Medicare Supplement insurance or contracts supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:
- (1) (4) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the current premium for the applicable policies or contracts, certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing. and
- (A) (b) Every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state pursuant to Article 54 of Chapter 58 of the North Carolina General Statutes An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as certificate that will conform with minimum loss ratio standards for Medicare Supplement

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Policies supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan or other entity issuer for such Medicare Supplement Insurance Policies or contracts, supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(d) Public Hearings. The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in the manner prescribed by statute.

Statutory Authority G.S. 58-2-40; 58-54-20.

### .0823 FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES

Every insurer providing group Medicare Supplement insurance benefits to a resident of this state pursuant to Article 54 of Chapter 58 of the North Carolina General Statutes shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group Medicare Supplement Policies issued in this state; provided, however, that no insurer shall be required to make a filing earlier than 31 days after insurance was provided to a resident of this state under a master policy issued for delivery outside this state.

Statutory Authority G.S. 58-2-40; 58-54-20.

### .0824 REQUIRED DISCLOSURE PROVISIONS

#### (a) General Rules.

- (1) Medicare Supplement Policies supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provisions must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.
- (2) Except for riders or endorsements by which the insurer issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare Supplement Policy, supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare Supplement Policy supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare Supplement Insurance Policies, supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.
- (3) A Medicare Supplement Policy which provides supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import. shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

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- (4) If a Medicare Supplement Policy supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations must shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- (5) Medicare Supplement Policies or supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.
- (6) Insurers issuing Issuers of accident and health policies or certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to all such applicants a copy of the North Carolina Buyer's Guide and the Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration in a type size no smaller than 12-point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates or subscriber contracts are advertised, solicited or issued as Medicare Supplement Policies supplement policies or certificates as defined in this Rule. Except in the case of direct response insurers, issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the insurer. Direct response insurers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.
- (b) Notice Requirements.
- (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state an issuer shall notify its policyholders contract holders and certificate holders of modifications it has made to Medicare Supplement Insurance Policies or contracts supplement policies or certificates in a format acceptable to the Commissioner, or in the format prescribed in Title 14 NCAC 12 .0832 (Form A) if no other format is prescribed by the Commissioner as follows: Such notice shall:
- (A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare Supplement Insurance Policy or contract, supplement policy or certificate, and
- (B) Inform each covered person policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.
- (2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
- (3) Such notices shall not contain or be accompanied by any solicitation.
- (c) Outline of coverage requirements for Medicare Supplement Policies, supplement policies.
- (1) Insurers issuing Medicare Supplement Policies or certificates for delivery in this state Issuers shall provide an outline of coverage to all applicants each applicant at the time application is made presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and
- (2) If an outline of coverage is provided at the time of application and the Medicare Supplement Policy supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:  
"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."
- (3) The outline of coverage provided to applicants pursuant to this Rule consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Subparagraph (c)(4) of this Rule in no less than 12-point type. All plans A-J shall be shown on the cover page, and the plan or plans offered by the issuer shall be prominently identified. Premium information for the plan or plans offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for each plan that is offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

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- (4) The outline of coverage shall be in the language and format as prescribed by the NAIC in Section 16C(4) of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file with the North Carolina Department of Insurance. Copies may be obtained at a cost of fourteen dollars (\$14.00) each from the Life and Health Division, 430 N. Salisbury Street, Raleigh, North Carolina 27611. Paragraphs (1) and (2) shall be in the form prescribed below:

[COMPANY NAME]

### OUTLINE OF MEDICARE SUPPLEMENT COVERAGE AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

(A) Read your policy carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY!**

(B) Medicare Supplement Coverage - Policies of this category are designed to supplement Medicare by covering some hospital, medical and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine [delete if such coverage is provided].

(C) (i) [for agents]

Neither [insert company's name] nor its agents are connected with Medicare.

(ii) [for direct responses:]

[insert company's name] is not connected with Medicare.

(D) [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare Supplement coverage in the following order:]

<u>DESCRIPTION</u>	<u>THIS POLICY PAYS**</u>	<u>YOU PAY</u>
I. Minimum Standards		
SERVICE		
PART A		
INPATIENT HOSPITAL SERVICES:		
Semi-Private Room & Board		
Miscellaneous Hospital Services		
& Supplies, such as Drugs,		
X-Rays, Lab Tests & Operating Room		
BLOOD		
PART B		
MEDICAL EXPENSE:		
Services of a Physician		
Outpatient Services		
Medical Supplies and other than		
Prescribed Drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive Drugs		
 <u>DESCRIPTION</u>		
II. Additional Benefits		
PART A		
Part A Deductible		
Private Rooms		
In Hospital Private Nurses		
Skilled Nursing Facility Care		

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**PART A & B**

Home Health Services

**PART B**

Part B Deductible

Medical Charges in Excess of  
Medicare Allowable Expenses

(Percentage Paid)

**OUT OF POCKET MAXIMUM****PRESCRIPTION DRUGS****MISCELLANEOUS**

Respite Care Benefits

Expense Incurred in  
Foreign Country

**OTHER****TOTAL PREMIUM**

\$ \_\_\_\_\_

~~IN ADDITION TO THIS OUTLINE OF COVERAGE, INSURANCE COMPANY NAME WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.~~

~~If this policy does not provide coverage for a benefit listed in this Rule, the insurer must state "no coverage" beside that benefit in the first column.~~

- (E) Form A shall accompany the outline of coverage.
- (F) Statement that the policy does or does not cover the following:
- (i) Private duty nursing;
  - (ii) Skilled nursing home care costs (beyond what is covered by Medicare);
  - (iii) Custodial nursing home care costs;
  - (iv) Intermediate nursing home care costs;
  - (v) Home health care above number of visits covered by Medicare;
  - (vi) Physician charges (above Medicare's reasonable charges);
  - (vii) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
  - (viii) Care received outside the U.S.A.;
  - (ix) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (G) A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in Paragraph (e)(3) of this Rule, including conspicuous statements;
- (i) That the chart summarizing Medicare benefits only briefly describes such benefits;
  - (ii) That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.
- (H) A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.
- (I) The amount of premium for this policy.
- (d) Notice regarding policies or ~~subscriber contract~~ certificates which are not Medicare supplement policies. Any accident and health insurance policy or ~~subscriber contract~~ certificate, other than a ~~medicare~~ Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 of the Federal Social Security Act (42 U.S.C. 1395 et.seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified Title in 11 NCAC 12 .0816(2), issued for delivery in this state to persons eligible for Medicare by reason of age shall notify insureds under the policy or ~~subscriber contract~~ that the policy or ~~subscriber contract~~ is not a Medicare Supplement Policy, supplement policy or certificate. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or ~~subscriber contract~~, or if no outline of coverage is delivered, to the first page of the policy.

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or certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"**THIS [POLICY OR CERTIFICATE OR SUBSCRIBER CONTRACT] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT CERTIFICATE].** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

*Statutory Authority G.S. 58-2-40; 58-54-25.*

### .0825 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE

(a) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare Supplement supplement or other health insurance policy or certificate in force or whether a Medicare Supplement Policy supplement policy or certificate is intended to replace any other accident and health policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent except where the coverage is sold without an agent, containing such questions and statements may be used.

#### [Statements]

- (1) You do not need more than one Medicare supplement policy.
- (2) If you are 65 or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (3) The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility.
- (4) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.

#### [Questions]

To the best of your knowledge,

- (1) Do you have another Medicare Supplement insurance supplement policy or certificate in force (including health care service contract, health maintenance organization contract)? If so, with which company?
- (2) Did you have another Medicare Supplement policy or certificate in force during the last 12 months? Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate?
  - (A) If so, with which company?
  - (B) If that policy lapsed, when did it lapse? What kind of policy?
- (3) If the answer to question 1 or 2 is yes, do you intend to replace any of your these medical or health insurance coverage policies with this policy [certificate]?
- (4) Are you covered by Medicaid?
  - (b) Agents shall list any other health insurance policies they have sold to the applicant.
    - (1) List policies sold which are still in force.
    - (2) List policies sold in the past five years which are no longer in force.
- (c) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.
- (d) Upon determining that a sale will involve replacement of insurer, of Medicare supplement coverage, any issuer, other than a direct response insurer issuer or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare Supplement Policy supplement policy or certificate, a notice regarding replacement of accident and health Medicare supplement coverage. One copy of such notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer issuer. A direct response insurer issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness Medicare supplement coverage.

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(e) (4) The notice required by Paragraph (e) (d) of this Rule for an ~~insurer other than a direct response insurer~~, issuer shall be provided in substantially the following form in no less than 10-point type:

**NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF MEDICARE SUPPLEMENT INSURANCE**

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to ~~lapse or otherwise terminate existing Medicare Supplement supplement insurance and replace it with a policy to be issued by [company name] Insurance Company. Your new policy provides will provide~~ 30 days within which you may decide without cost whether you desire to keep the policy. ~~For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you and under the new policy.~~

You should review this new coverage carefully. ~~comparing~~ Compare it with all accident and sickness coverage you now have. ~~and terminate~~ Terminate your present policy only if after due consideration, you find that purchase of this Medicare ~~Supplement~~ supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY ISSUER OR AGENT [BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheet, as necessary.)

I have reviewed your current medical or health insurance coverage. ~~I believe the~~ The replacement of insurance involved in this transaction ~~materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:~~ does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- Other. (Please specify)

- (1) Health conditions which you may ~~presently~~ now have (preexisting conditions) may not be immediately or fully covered under the new policy ~~if you have had your present policy for less than six months. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~
- (2) State law provides that your reinstated or replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
- (3) If you are replacing existing Medicare Supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (2) (4) If after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, ~~reread~~ review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this Paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

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Signature of Agent, Broker or Other Representative  
[Typed Name and Address of Issuer, Agent or Broker]  
The above "Notice to Applicant" was delivered to me on:

(DATE)

(Applicant's Signature)

(Date)

\*Signature not required for direct response sales.

- (f) Paragraph 1 of the replacement notice (applicable to pre-existing conditions) may be deleted by an issuer if the replacement does not involve application of a new pre-existing condition limitation.  
(e) The notice required by Paragraph (e) of this Rule for a direct response shall be as follows:

### **NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE**

(Insurance company's name and address)

#### **SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.**

According to [your application] information you have furnished, you intend to lapse or otherwise terminate existing Medicare Supplement insurance and replace it with the policy delivered herewith issued by [company name] Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare Supplement coverage is a wise decision.

- (1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) State law provides that your reinstated or replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
- (3) If you are replacing existing Medicare Supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (4) To be included only if the application is attached to the policy. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [Company Name and Address] within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

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*Statutory Authority G.S. 58-2-40; 58-54-25.*

### **.0826 FILING REQUIREMENTS FOR ADVERTISING**

~~Every insurer, hospital or medical service corporation or health maintenance organization or other entity providing Medicare Supplement insurance or benefits in this state. An issuer shall provide a copy of any Medicare Supplement supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this State 90 days prior to its use for review or approval by the Commissioner as required under state law.~~

*Statutory Authority G.S. 58-2-40; 58-54-35.*

### **.0827 STANDARDS FOR MARKETING**

(a) ~~Every insurer, health care service plan or other entity marketing Medicare Supplement insurance coverage in this state. An issuer, directly or through its producers, shall:~~

- (1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) Display prominently by type, stamp or other appropriate means, on the first page of the ~~outline of coverage~~ and policy the following:  
*"Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations your medical expenses."*
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare Supplement supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.
- (5) Every insurer or entity marketing Medicare Supplement insurance shall establish Establish auditable procedures for verifying compliance with Paragraph (a) of this Rule.  
(b) In addition to the practices prohibited in Article 63 of Chapter 58 of the North Carolina General Statutes, the following acts and practices are prohibited:
  - (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance

policies or ~~insurers~~ issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another ~~insurer~~ issuer.

- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
- (3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(c) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around," and words of similar import shall not be used unless the policy is issued in compliance with this Rule.

*Statutory Authority G.S. 58-2-40.*

### **.0828 APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE**

(a) In recommending the purchase or replacement of any Medicare Supplement supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare Supplement supplement coverage which that will provide an individual more than one Medicare Supplement supplement policy or certificate is prohibited. provided, however, that additional Medicare Supplement coverage may be sold if, when combined with that individual's health coverage already in force, it would insure no more than 100 percent of the individual's actual medical expenses covered under the combined policies.

*Statutory Authority G.S. 58-2-40.*

### **.0829 REPORTING OF MULTIPLE POLICIES**

(a) On or before March 1 every insurer or other entity providing Medicare Supplement insurance coverage in this state of each year an issuer shall report the following information for every individual resident of this state for which the ~~insurer~~ or entity issuer has in force more than one Med-

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icare Supplement supplement insurance policy or certificate:

- (1) Policy and certificate numbers, and
  - (2) Date of issuance.
- (b) The items set forth in this Rule must be grouped by individual policyholder.

(c) The reporting form for compliance with this Rule shall be in the format prescribed by the NAIC in Appendix B of the Model Regulation to Implement the NAIC Medicare Supplement Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this form is on file at the North Carolina Department of Insurance; and copies may be obtained from the Department at a cost of fifty cents (\$0.50) each.

Statutory Authority G.S. 58-2-40.

### .0830 PROHIBITIONS IN REPLACEMENT POLICIES OR CERTIFICATES

(a) If a Medicare Supplement supplement policy or certificate replaces another Medicare Supplement supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare Supplement supplement policy for similar benefits to the extent such time was spent under the original policy.

(b) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in effect for at least six months, the replacing policy shall not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods.

(c) A separate charge may not be made to the applicant for the waiver of the pre-existing condition or other waiting period in a replacement policy.

Statutory Authority G.S. 58-2-40.

### .0831 MEDICARE SUPPLEMENT ANNUAL REPORT

Each insurer shall report on or before July 1st of each year to the Commissioner the following:

- (1) policy or certificate plan name;
- (2) policy or certificate form number;
- (3) policy or certificate approval date;
- (4) number of insureds;
- (5) plans withdrawn from sale; and
- (6) insurer's address and telephone number.

Statutory Authority G.S. 58-2-40.

### .0832 NOTICE FORMS

The notice required by 44 NCAC 12 .0821(b)(1) shall appear in the following format:

- (1) Form A is a notice that describes any changes in Medicare coverages for the current and following years and any resulting changes in Medicare Supplement coverage. This notice must include the name of the company issuing the policy as well as the agent who sells the Medicare Supplement policy.
- (2) All forms described in this Rule may be obtained in the Life, Accident and Health Division, North Carolina Department of Insurance, 430 N. Salisbury Street, Raleigh, North Carolina 27611, or by calling (919) 733-5060.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-35.

### .0833 BENEFIT CONVERSION

#### REQUIREMENTS DURING TRANSITION

- (a) Effective January 1, 1990, no Medicare Supplement insurance policy, contract or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.
- (b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.
- (c) For Medicare Supplement policies subject to minimum standards adopted by the states pursuant to Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:
  - (1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
  - (2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
  - (3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
  - (4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
  - (5) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance

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- with federal regulations or already paid for under Part B;
- (6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [seventy-five dollars (\$75.00)]. Included within this provision is coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy, subject to the Medicare deductible amount;
- (7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.
- (H) General Requirements.
- (1) No later than January 31, 1990, every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to Medicare Supplement insurance policies or contracts. Such notice shall be in a format prescribed by the Commissioner or in the format adopted by the NAIC (Form A) if no other format is prescribed by the Commissioner.
- (A) Such notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare Supplement insurance policy or contract.
- (B) The notice shall inform each covered person as to when any premium adjustment due to changes in Medicare benefits will be effective.
- (C) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
- (D) Such notice shall not contain or be accompanied by any solicitation.
- (2) No modifications to an existing Medicare Supplement contract or policy shall be made at the time of or in connection with the notice requirements of this Regulation except to the extent necessary to accomplish the purposes of this Regulation.
- (e) Form and Rate Filing Requirements: As soon as practicable, but no longer than 45 days after the effective date of the Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare Supplement insurance or contracts in this state shall file with the Department, in accordance with the applicable filing procedure of this state:
- (1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing.
- (2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare Supplement insurance modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by Paragraphs (a), (b) and (e) of this Rule. Any such riders, endorsements or policy forms shall provide a clear description of the Medicare Supplement benefits provided by the policy or contract.
- (f) Upon satisfying the filing (and approval) requirements of this state, every insurer, health care service plan or other entity providing Medicare Supplement insurance in this state shall provide each covered person with any rider, endorsement or policy form necessary to make the adjustments outlined in Paragraphs (a), (b) and (e) of this Rule.
- (g) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare Supplement policies and shall result in an expected loss ratio at least as great as that originally anticipated by the insurer, health care service plan or other entity for such Medicare Supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.
- (H) Offer of Reinstatement of Coverage:
- (1) Except as provided in Subparagraph (2) of this Paragraph, in the case of an individual who had in effect, as of December 31, 1988, a Medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before the date of the enactment of the repeal of the Medicare Catastrophic Coverage Act of 1988, the insurer shall

- (A) Provide written notice no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in Subparagraph (B) of this Paragraph; and
- (B) Offer the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstatement of coverage (with coverage effective as of January 1, 1990), under terms which do not provide for any waiting period with respect to treatment of pre-existing conditions; provide for coverage which is substantially equivalent to coverage in effect before the date of such termination; and provide for classification of premiums on terms which are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.
- (2) An insurer is not required to make the offer under Subparagraph (B) of this Paragraph in the case of an individual who is a policyholder or certificate holder in another Medicare supplemental policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

*Statutory Authority G.S. 58-2-40; 58-54-10.*

**.0834 PERMITTED COMPENSATION ARRANGEMENTS**

- (a) As used in this Rule:
- (1) "Compensation" means consideration or remuneration of any kind relating to the sale or renewal of a policy, including but not limited to commissions, bonuses, gifts, prizes, or awards.
- (2) "Policy" includes a certificate.
- (3) "Representative" includes an agent, general agent, manager, broker, or other producer.
- (b) A person. An issuer may provide compensation to a representative for the sale of a policy only if the compensation for the first year or period is no more than 200 percent of the compensation provided in the second year or period.
- (c) The compensation provided in subsequent renewal years or periods must be the same as that provided in the second year or period and must be provided for not less no fewer than four subsequent five renewal years or periods.
- (d) If a policy is replaced, no person shall provide and no representative shall receive compensation greater than that payable by the replacing insurer issuer on renewal policies. This Paragraph does not apply if the benefits of the replacement policy are clearly and substantially greater than the benefits of the replaced policy.
- (e) Each insurer shall establish marketing procedures that set forth a mechanism or formula for determining whether replacement policies contain benefits clearly and substantially greater than the benefits of replaced policies.

*Statutory Authority G.S. 58-2-40; 58-54-15.*

**.0835 MINIMUM BENEFIT STANDARDS ON OR AFTER JANUARY 1, 1992**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Section.
- (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
- (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
- (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes, but new premiums must be filed and approved by the Commissioner before use.
- (d) No Medicare supplement policy or certificate shall provide for termination of cov-

- erage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium.
- (e) Each Medicare supplement policy shall be guaranteed renewable and:
- (i) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.
  - (ii) The issuer shall not cancel or nonrenew the policy for any reason other than non-payment of premium or material misrepresentation.
  - (iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (1)(c)(v) of this Rule, the issuer shall offer each certificateholder an individual Medicare supplement policy that, at the option of the certificateholder:
    - (A) Provides for continuation of the benefits contained in the group policy, or
    - (B) Provides for such benefits as otherwise meet the requirements of this Rule.
  - (iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall either:
    - (A) Offer the certificateholder the conversion opportunity described in Subparagraph (1)(e)(iii) of this Rule; or
    - (B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
  - (v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period,

- if any, or payment of the maximum benefits.
- (g) Suspension During Medicaid Eligibility.
- (i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.
  - (ii) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
  - (iii) Reinstatement of such coverages:
    - (A) Shall not provide for any waiting period with respect to treatment of pre-existing conditions;
    - (B) Shall provide for coverage that is substantially equivalent to coverage in effect before the date of such suspension; and
    - (C) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.
- (2) Standards for Basic ("Core") Benefits Common to All Benefit Plans: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medi-

care Supplement Benefit Plans in addition to the basic "core" package, but not in lieu thereof.

- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
- (b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
- (c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
- (d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
- (e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 11 NCAC 12 .0836.

- (a) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
- (b) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.
- (c) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
- (d) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the

Medicare program or state law, and the Medicare-approved Part B charge.

- (e) One Hundred Percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge.
- (f) Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
- (g) Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
- (h) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250.00) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.
- (i) Preventive Medical Care Benefit: Coverage for the following preventive health services:
  - (i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (3)(i)(ii) of this Rule and patient education to address preventive health care measures.
  - (ii) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

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- (A) Fecal occult blood test and or digital rectal examination;
- (B) Mammogram;
- (C) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;
- (D) Pure tone (air only) hearing screening test, administered or ordered by a physician;
- (E) Serum cholesterol screening (every five years);
- (F) Thyroid function test;
- (G) Diabetes screening.
- (iii) Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphteria booster (every ten years).
- (iv) Any other tests or preventive measures determined appropriate by the attending physician.
- Reimbursement shall be for the actual charges up to one hundred percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120.00) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.
- (j) At-Home Recovery Benefit: Coverage for services to provide short term at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.
- (i) For purposes of this benefit, the following definitions shall apply:
- (A) "Activities of daily living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
- (B) "Care provider" means a duly qualified or licensed home health aide homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
- (C) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.
- (D) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.
- (ii) Coverage Requirements and Limitations.
- (A) At-home recovery services provided must be primarily services that assist in activities of daily living.
- (B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
- (C) Coverage is limited to:
- (I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.
- (II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit.
- (III) One thousand six hundred dollars (\$1,600) per calendar year.
- (IV) Seven visits in any one week.
- (V) Care furnished on a visiting basis in the insured's home.
- (VI) Services provided by a care provider, as defined in this Rule.
- (VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.
- (VIII) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home health care visit.
- (iii) Coverage is excluded for:
- (A) Home care visits paid for by Medicare or other government programs; and
- (B) Care provided by family members, unpaid volunteers or providers who are not care providers.
- (k) New or Innovative Benefits: An issuer may, with the prior approval of the

Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

*Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.*

**.0836 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS**

(a) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in 11 NCAC 12 .0835(2).

(b) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this Rule shall be offered for sale in this State, except as may be permitted in 11 NCAC 12 .0835(3)(k).

(c) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "J" listed in this Rule and conform to the definitions in G.S. 58-54-1 and 11 NCAC 12 .0815. Each benefit shall be structured in accordance with the format provided in 11 NCAC 12 .0835(2) and (3), and the policy shall list the benefits in the order shown in this Section. For purposes of this Rule, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(d) An issuer may use, in addition to the benefit plan designations required in Paragraph (c) of this Rule, other designations to the extent permitted by law.

(e) Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in 11 NCAC 12 .0835(2).

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The Core Benefit plus the Medicare Part A Deductible as defined in 11 NCAC 12 .0835(3)(a).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and

Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (c), and (h) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (h), and (j) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in 11 NCAC 12 .0835(3)(a), (b), (h), and (i) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, the Part B Deductible, 100 percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), and (h) respectively.

(7) Standardized Medicare supplement benefit plan "G" shall include only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 80 Percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (d), (h), and (j) respectively.

(8) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in 11 NCAC 12 .0835(3)(a), (b), (f), and (h) respectively.

(9) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 100 Percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically

Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (e), (f), (h), and (j) respectively.

- (10) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The Core Benefit plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100 percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and the At-Home Recovery Benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively.

*Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.*

**.0837 OPEN ENROLLMENT**

(a) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an applicant where an application for such policy or certificate is submitted during the six-month period beginning with the first month in which an individual (who is aged 65 years or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this Rule without regard to age.

(b) Paragraph (a) of this Rule does not prevent the exclusion of benefits under a policy during the first six months, based on a pre-existing condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six-month period before the policy became effective.

*Statutory Authority G.S. 58-2-40; 58-54-10.*

**.0838 FILING AND APPROVAL OF POLICIES/CERTIFICATES AND PREMIUM RATES**

(a) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this State unless the policy form or certificate form has been filed in triplicate with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by statute or rule.

(b) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by statute or rule.

(c) Except as provided in Subparagraph (c)(1) of this Rule, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(1) An issuer may offer, with the approval of the Commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

- (A) The inclusion of new or innovative benefits;
- (B) The addition of either direct response or agent marketing methods;
- (C) The addition of either guaranteed issue or underwritten coverage;
- (D) The offering of coverage to individuals eligible for Medicare by reason of disability.

(2) For the purposes of this Rule, a "type" means an individual policy or a group policy.

(d) Except as provided in Subparagraph (d)(1) of this Rule, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(1) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner written notice of the issuer's decision at least 30 days before discontinuing availability. After the Commissioner receives this notice, the issuer shall no longer offer for sale the policy form or certificate form in this State.

(2) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (d)(1) of this Rule shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the Commissioner of the discontinuance. The period

of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate and in the public interest.

(e) The sale or other transfer of a Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this Rule.

(f) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (d) of this Rule unless the issuer complies with the following requirements:

(1) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(2) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential that is in the public interest.

(g) Refund or Credit Calculation.

(1) Except as provided in Subparagraph (g)(2) of this Rule, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 11 NCAC 12 .0822(b).

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Statutory Authority G.S. 58-2-40; 58-54-20.

## **TITLE 13 - DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt rule(s) cited as 13 NCAC 7C .0107.*

*The proposed effective date of this action is February 1, 1992.*

*The public hearing will be conducted at 2:00 p.m. on December 13, 1991 at the Highway Building, Room 150, 1 S. Wilmington Street, Raleigh, N.C.*

*Reason for Proposed Action: To clarify that places of employment must be constructed and maintained in accordance with the State Building Code to satisfy OSH requirements.*

*Comment Procedures: People wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department by December 9, 1991. Written comments will be accepted by the Department until December 15, 1991. Direct all correspondence to Bobby Bryan, N.C. Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601.*

## **CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

### **SUBCHAPTER 7C - SAFETY AND HEALTH**

#### **SECTION .0100 - GENERAL INDUSTRY: CONSTRUCTION AND AGRICULTURE**

##### **.0107 STATE BUILDING CODE**

(a) Except as specified in Paragraph (b) of this Rule, all places of employment newly occupied after the effective date of this Rule shall be constructed and maintained in accordance with the standards set out in Volume I, General Construction Code, and Volume V, Fire Prevention Code, of the North Carolina State Building Code (1991 Edition), which are hereby incorporated by reference. This incorporation shall not include any subsequent editions or amendments of these volumes. Copies of these volumes can be obtained from the North Carolina Department of Insurance, Code Council Section, Post Office Box 26387, Raleigh, NC 27611. The prices are twenty five dollars (\$25.00) for Volume I and twenty dollars (\$20.00) for Volume V.

(b) Volume I of the North Carolina State Building Code shall be subject to the following modifications:

- (1) Section 506.6.2.6. Sequential and Selective Operation. Add a sentence to read: "Hydraulic elevators which do not serve more than three floors shall be designed and installed with their own emergency power to complete the lowering process."
- (2) Section 701.1.2, Table 700. Elevator shaft enclosures and elevator machine rooms shall have a two-hour fire resistive rating and the opening protectives shall have a one and one-half hour fire resistive rating.
- (3) Section 2402.6.3. Vents. Delete the last sentence in the first paragraph and add in its place a sentence to read as follows: "Vents may be closed when designed to be opened automatically if a smoke de-

tector and heat detector located at the top of the hoistway is activated."

*Statutory Authority G.S. 95-131.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR intends to amend rule(s) cited as 15A NCAC 7H .0306.*

*The proposed effective date of this action is April 1, 1992.*

*The public hearing will be conducted at 4:00 p.m. on December 12, 1991 at the Best Western Armada, Mile Post 17, Nags Head, NC 27959.*

*Reason for Proposed Action: The reason for this proposed action is to amend the criteria used to define a large structure for purposes of determining oceanfront setbacks.*

*Comment Procedures: All persons interested in this matter is invited to attend the public hearing. The Coastal Resources Commission will receive written comments up until December 15, 1991. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Dedra Blackwell, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.*

**CHAPTER 7 - COASTAL MANAGEMENT**

**SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .0300 - OCEAN HAZARD AREAS**

**.0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in these Regulations shall be located according to whichever of the following rules is applicable.

(1) If neither a primary nor frontal dune exists in the AEC on or behind the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line

shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than 2 feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.

- (2) If a primary dune exists in the AEC on or behind the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development behind the crest of the primary dune would preclude any practical use of the lot, development may be located seaward of the primary dune. In such cases, the development shall be located behind the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or behind the lot on which the development proposed, the development shall be set behind the frontal dune or behind the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.
- (4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for set-

## **PROPOSED RULES**

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back behind the primary and/or frontal dune, for all multi-family residential structures (including motels, hotels, condominiums and moteliniums) of more than 4 units or 5,000 square feet total floor area, and for any non-residential structure with a total area any structure of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback described in .0306(a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long-term annual erosion rate plus 105 feet.

(5) Established common-law and statutory public rights of access to public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development will be permitted that involves the significant removal or relocation of primary or frontal dune sand or vegetation thereon. If possible, other dunes within the ocean hazard area shall be disturbed only to the extent allowed by Rule .0308(b).

(c) In order to avoid excessive public expenditures for maintaining public safety, construction or placement of growth-inducing public facilities to be supported by public funds will be permitted in the ocean hazard area only when such facilities:

- (1) clearly exhibit overriding factors of national or state interest and public benefit,
- (2) will not increase existing hazards or damage natural buffers,
- (3) will be reasonably safe from flood and erosion related damage,
- (4) will not promote growth and development in ocean hazard areas.

Such facilities include, but are not limited to, sewers, waterlines, roads, bridges, and erosion control structures.

(d) Development shall not cause major or irreversible damage to valuable documented historic architectural or archaeological resources.

(e) Development shall be consistent with minimum lot size and set back requirements established by local regulations.

(f) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(g) Development shall be consistent with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

(h) Development shall not create undue interference with legal access to, or use of, public resources.

(i) Development proposals shall incorporate all reasonable means and methods to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that will:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(j) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgement from the applicant that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(k) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC regulations. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

*Statutory Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.*

## **TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule(s) cited as 16 NCAC 6D .0210.*

*The proposed effective date of this action is March 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on December 19, 1991 at the 3rd Floor State*

## PROPOSED RULES

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*Board Room, Education Building, 116 West Edenton Street, Raleigh, NC 27603-1712.*

**R**eason for Proposed Action: Rule is being amended pursuant to G.S. 115C-102 (amended 1991).

**C**omment Procedures: Any interested person may present views and comments in writing either prior to or at the hearing or orally at the hearing.

### CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

#### SUBCHAPTER 6D - INSTRUCTION

##### SECTION .0200 - TEXTBOOKS

###### .0210 DISPOSITION OF OLD TEXTBOOKS

LEAs will dispose of old textbooks which are no longer listed on the state-adopted textbook list as follows:

- (1) LEAs may not give textbooks replaced by a new adoption to any person, firm, or corporation or institution for use where tuition is charged or for resale except as provided in Subparagraph (3) of this Rule.
- (2) The LEA may use these textbooks or give them to students for use as supplementary material.
- (3) The LEA may sell these textbooks only for scrap paper. and it must remit the proceeds of the Department.
- (4) LEAs may donate out-of-adoption books to state sponsored adult education programs, including educational programs supported by other state agencies, and to non-profit agencies or organizations.
- (5) LEAs may donate textbooks to non-profit organizations for use in foreign countries to increase the general literacy of the people.

*Statutory Authority G.S. 115C-89.*

### TITLE 21 - OCCUPATIONAL LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Certified Public Accountant Examiners intends to amend rule(s) cited as 21 NCAC 8K .0201.*

*The proposed effective date of this action is March 1, 1992.*

*The public hearing will be conducted at 10:00 a.m. on December 16, 1991 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.*

**R**eason for Proposed Action: This amendment would remove language that conflicts with 21 NCAC 8G .0306.

**C**omment Procedures: Any person interested in this rule may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than 5:00 p.m., December 2, 1991. Anyone planning to attend the hearing should notify the Board office by 5:00 p.m. on December 2, 1991, whether they wish to speak on the proposal and whether they will speak in favor or against them. Anyone speaking on the proposal will be limited to 10 minutes.

### CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

#### SUBCHAPTER 8K - PROFESSIONAL CORPORATIONS

##### SECTION .0200 - PRACTICE PROCEDURES OF PROFESSIONAL CORPORATIONS

###### .0201 CORPORATE NAMES

The corporate name of a professional corporation registered under these rules shall contain the wording "corporation," "incorporated," "limited," "company," "professional corporation," or "professional association," or an abbreviation of one of the foregoing: "Corp.," "Inc.," "Ltd.," "Co.," "P.C.," or "P.A.". The use of "CPA" or "Certified Public Accountant(s)" in the corporate name is encouraged, but not required. The name shall also meet the requirements in 21 NCAC 8G .0305 and .0306.

*Statutory Authority G.S. 55B-5; 55B-12.*

## **FINAL RULES**

*Adopted rules filed by the Department of Revenue are published in this section. This department is not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Effective October 1, 1991, the Departments of Correction and Revenue are subject to G.S. 150B, Article 2A. The rules appearing in this section were filed prior to October 1, 1991 and are not subject to the notice requirements.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

### **TITLE 19A - DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 1 - DEPARTMENTAL RULES**

##### **SUBCHAPTER 1A - ORGANIZATION OF THE DEPARTMENT**

###### **SECTION .0200 - SECRETARY OF TRANSPORTATION**

###### **.0204 PUBLIC AFFAIRS SECTION**

###### **.0205 PERSONNEL**

###### **.0206 CIVIL RIGHTS COORDINATOR**

*History Note: Statutory Authority G.S. 126-16; 143B-10; 143B-348;*

*Eff. July 1, 1978;*

*Repealed Eff. November 1, 1991.*

###### **SECTION .0400 - DIVISION OF HIGHWAYS**

###### **.0404 DUTIES AND RESPONSIBILITIES: STATE HIGHWAY ADMINISTRATOR**

*History Note: Statutory Authority G.S. 20-119; 133-5; 136*

*-18.3; 136-18(5); 136-18(11); 136-19;*

*136-28.1; 136-29; 136-30; 136-44.1; 136-64.1(d);*

*136-71.9; 136-71.10; 136-89.51; 136-89.59;*

*136-93; 143B-10(j); 143B-350(f), (g);*

*Eff. July 1, 1978;*

*Amended Eff. January 1, 1986; October 1, 1983;*

*Repealed Eff. November 1, 1991.*

###### **.0406 HIGHWAY PLANNING SECTION**

###### **.0407 PROJECT MANAGEMENT AND PRODUCTIVITY CONTROL SECTION**

###### **.0408 OPERATIONS SECTION**

*History Note: Statutory Authority G.S. 136-12; 136-14.1; 136-15;*

*136-17.2; 136-18; 136-19; 136-28.6; 136-44.2;*

*136-44.2B; 136-44.4; 136-44.11; 136-44.50; 136-66.1;*

*136-66.3; 136-66.5; 136-82; 136-89; 136-184;*

*143B-10(b),(g),(j); 143B-348; 143B-350;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1985;*

*Repealed Eff. November 1, 1991.*

###### **SECTION .0500 - ASSISTANT SECRETARY FOR MANAGEMENT**

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- .0501 IDENTIFYING INFORMATION**
- .0502 FUNCTIONS**
- .0503 TRANSPORTATION COMPUTING CENTER SECTION**
- .0504 FISCAL**
- .0505 PURCHASING**
- .0506 INTERNAL AUDIT**
- .0507 OCCUPATIONAL SAFETY AND EMERGENCY PLANNING**
- .0508 MANAGEMENT ENGINEERING**

*History Note: Statutory Authority G.S. 20-3; 20-26; 20-27; 20-43; 95-126(b)(2); 95-127(10); 95-148; 136-10; 143-49; 143-51; 143-157; 143B-10(b); 143B-348; Eff. July 1, 1978; Amended Eff. July 1, 1982; July 1, 1981; Repealed Eff. November 1, 1991.*

### **SECTION .0600 - ASSISTANT SECRETARY FOR PLANNING**

- .0601 IDENTIFYING INFORMATION**
- .0602 FUNCTIONS**
- .0603 TRANSPORTATION SYSTEMS PLANNING SECTION**
- .0604 BICYCLE AND BIKEWAY SECTION**
- .0605 PUBLIC TRANSPORTATION DIVISION**
- .0606 IDENTIFYING INFORMATION: DIVISION OF AERONAUTICS**
- .0607 FUNCTIONS: DIVISION OF AERONAUTICS**
- .0608 AIRPORT DEVELOPMENT SECTION**
- .0609 AIR TRANSPORTATION DEVELOPMENT SECTION**
- .0610 AIR SAFETY SECTION**
- .0611 AERONAUTICS COUNCIL**

*History Note: Statutory Authority G.S. 113-28.5; 113-28.6; 113-28.12; 136-44.20; 143B-10(a),(b); 143B-350(f),(g); 143B-355; 143B-356; Eff. July 1, 1978; Repealed Eff. November 1, 1991.*

### **SECTION .0700 - DIVISION OF MOTOR VEHICLES**

#### **.0701 IDENTIFYING INFORMATION**

- (a) The principal office of the division of motor vehicles is located at:  
Motor Vehicles Building  
1100 New Bern Avenue  
Raleigh, North Carolina 27697
- (b) The locations of other offices within this division, when such offices are not located at the above address, are on file in the respective Section main offices at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-40; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

#### **.0703 STRUCTURE OF THE DIVISION**

The division's organizational structure consists of six section components: driver license, vehicle registration, enforcement, international registration plan (IRP), collision reports general services, and school bus and traffic safety.

*History Note: Statutory Authority G.S. 20-1 to 20-3; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

## **FINAL RULES**

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### **.0705 DRIVER LICENSE SECTION**

(a) Functions. The driver license section conducts the testing of all persons who seek legal permits to drive. The section conducts the Driver Improvement Conference and processes all driver records. Medical evaluations of selected drivers are conducted when necessary. The section also conducts hearings in conjunction with its authority to suspend, revoke, or cancel licenses.

**Note:** The various statutory authorities for the suspension, revocation or cancellation of licenses are contained in Article 2 of Chapter 20 of the General Statutes -- The Uniform Drivers License Act. In addition, the section has an internal review procedure [G.S. 20-16(d)]. It is important to note that for non-mandatory revocation, cancellations, or suspensions, there is the right of appeal to the courts (G.S. 20-25).

(b) Identifying Information. Driver license examining offices are located throughout the state. The addresses for these offices are on file in the driver license section main office at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-39; 20-40; 20-50; 20-63(h); 20-86.1; 20-315; 20-316; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

### **.0706 VEHICLE REGISTRATION SECTION**

(a) Functions. The vehicle registration section is administered by a director responsible to the Commissioner of Motor Vehicles. The section is responsible for the distribution and issuance of license plates, issuance of certificates of titles and certificates of registration, recording of liens against motor vehicles, enforcement of the Financial Responsibility Act of 1957 and the collection of registration fees, use or sales tax. In order to provide statewide service, contracting license plate agents are established for the issuance of license plates and acceptance of applications for certificates of title. In addition to the main Raleigh office located in the Motor Vehicle Building two license plate branch offices are located in Charlotte. Insurance hearing officers hold hearings for individuals who have had their insurance terminated.

(b) Identifying Information. Addresses for vehicle registration section offices outside Raleigh are on file in the vehicle registration section main office at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-39; 20-40; 20-63(h); 20-86.1; 20-315; 20-316; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

### **.0707 ENFORCEMENT SECTION**

(a) Functions. The enforcement section is responsible for administering and enforcing the Motor Vehicle Safety Inspection Program; the Motor Vehicle Safety Equipment Exhaust Emission Program; the Motor Vehicle Dealers and Manufacturers Licensing Act; the size and weight laws on trucks operating on the streets and highways; the fuel tax laws of the North Carolina Department of Revenue; the laws pertaining to the public and private sale of motor vehicles to satisfy storage and/or mechanic's liens and under judicial procedures; the laws and reciprocal agreements governing registration of motor vehicles; the Federal Motor Carrier Safety Regulations including HAZMAT placarding; and all motor vehicle laws (Chapter 20) pertaining to the operation of vehicles. Further, the enforcement section is responsible for examining salvage vehicles to prevent auto theft, use of stolen parts, salvage switches, and fraud; investigating stolen motor vehicles, fictitious driver licenses and fraudulent titles and maintaining a central file of all vehicles reported stolen or recovered in North Carolina; collecting returned checks given to the Division of Motor Vehicles; processing and maintaining records of all vehicles stored by law enforcement personnel throughout the state; establishing standards and procedures for equipment approval by the Commissioner of Motor Vehicles; auditing motor carrier company records for violations of Federal Motor Carrier Regulations; serving registration plate and driver license revocation orders; and licensing truck driver training schools and their instructors.

(b) Identifying Information. Addresses for enforcement section offices outside Raleigh are on file in the enforcement section main office at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 15A-401; 15-402; 20-1; 20-3; 20-39; 20-40; 20-49; 20-77; 20-102;*

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20-104; 20-110; 20-111; 20-114; 20-118.1;  
20-183.2; 20-183.4; 20-183.5; 20-183.9;  
20-285; 44A-4;  
*Eff. July 1, 1978;*  
*Amended Eff. November 1, 1991; April 22, 1981.*

### **.0708 INTERNATIONAL REGISTRATION PLAN (IRP) SECTION**

(a) Functions. The international registration plan (IRP) section is responsible for the administration of the International Registration Plan Agreement which covers the titling, licensing, and auditing records of apportionable vehicles. The section is also responsible for the titling and licensing of trailers under the five-year registration plan and vehicles allocated by non-resident rental companies and for monitoring the allocation of "U-Drive-It" passenger vehicles.

(b) Identifying Information. Addresses for international registration plan (IRP) offices outside Raleigh are on file in the international registration plan (IRP) section main office at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 20-39; 20-50;  
20-84.2; 20-87 to 20-93;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0709 COLLISION REPORTS/GENERAL SERVICES SECTION**

The collision reports general services section is responsible for administration of the accident reporting laws and financial responsibility laws relating to traffic accidents. The section is also charged with the responsibility of furnishing statistical traffic data to the general public on a local, state and national scale.

*History Note: Statutory Authority G.S. 20-3; 20-43;  
20-177; 20-279.3; 20-279.4;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0710 SCHOOL BUS AND TRAFFIC SAFETY SECTION**

(a) Functions. The school bus and traffic safety section is responsible for administering programs to train and certify school bus drivers, issuing restricted instruction permits, licensing the state's commercial driver training schools, conducting the division of motor vehicles' driver improvement clinics. This section also provides traffic safety educational programs and material to highway users.

(b) Identifying Information. Addresses for school bus and traffic safety section offices outside Raleigh are on file in the school bus and traffic safety section main office at the Motor Vehicles Building in Raleigh.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-218; 20-321;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0711 GOVERNOR'S HIGHWAY SAFETY PROGRAM**

The Governor's Highway Safety Program is responsible for administering, developing and coordinating state and local activities and plans for the reduction of highway traffic crashes, fatalities and injuries. The Governor's Highway Safety Program operates under the supervision of a representative appointed by the Governor and serving at his pleasure. This function includes administering funds under the Federal Highway Safety Act. The section also coordinates management information and property control and administers field services.

*History Note: Statutory Authority G.S. 20-1; 143B-360; 147-12(10);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

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## **SECTION .0900 - NORTH CAROLINA RAILROAD COMPANY**

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## ***FINAL RULES***

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### **.0901 IDENTIFYING INFORMATION**

(a) The North Carolina Railroad Company is a private corporation, of which a majority of the capital stock is owned by the State of North Carolina. The Governor appoints 10 of the 15 members of the board of directors and five members are elected by the stockholders at a general meeting.

(b) The North Carolina Railroad Company may be contacted at the following address and telephone number:

North Carolina Railroad Company  
P. O. Box 2248  
Raleigh, North Carolina 27602  
Telephone: (919) 829-7355  
FAX: (919) 829-7356

*History Note: Statutory Authority G.S. 143B-358; 147-12(7); S.L. 1849, Ch. 82, s. 1; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

### **.0902 FUNCTIONS**

The North Carolina Railroad Company was incorporated to effect east-west railroad transportation from Morehead City through the center of the state. The east-west railroad line facilitates the conveyance of freight between Selma and Morehead City, and freight and passengers between Selma and Charlotte. It connects with various interstate railroads along the line. The North Carolina Railroad Company is a non-operating company with all properties leased, and all operations are conducted by the lessee.

*History Note: Statutory Authority G.S. 147-12(7); S.L. 1849, Ch. 82, s. 1; Eff. July 1, 1978; Amended Eff. November 1, 1991.*

## **CHAPTER 2 - DIVISION OF HIGHWAYS**

### **SUBCHAPTER 2A - GENERAL ADMINISTRATION**

#### **SECTION .0100 - STATE HIGHWAY ADMINISTRATOR**

### **.0102 DUTIES OF ADMINISTRATOR**

The duties and responsibilities of the State Highway Administrator and conferred by law and delegated or prescribed by the Secretary or Board of Transportation include:

- (1) recommend ordinances based upon engineering studies of the Traffic Engineering Branch;
- (2) enter into agreements and contracts for the board;
- (3) carry out Board programs and functions;
- (4) has certain powers and duties concerning highway right of way acquisitions which may be sub-delegated to the right of way branch:
  - (a) negotiate and execute documents on the acquisition and release of rights of way, borrow and local material deposits and waste disposal areas;
  - (b) award and execute contracts as to buildings and improvements to be cleared from rights of way;  
**Note:** See contract procedure in G.S. 136-28.1.
  - (c) execute United States Department of Transportation right of way certificates;
  - (d) execute right of way encroachment and utility relocation agreements; and
  - (e) approve right of way payments;
- (5) negotiate and execute contracts with right of way fee appraisers;
- (6) negotiate and enter into agreements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act;
- (7) authorized to make spot safety improvement funds for primary, secondary, and urban safety projects available as needed and that said authority may be delegated to the Manager of Traffic Engineering by the State Highway Administrator;
- (8) execute lease or rental agreements on behalf of the State;

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- (9) annually inspect the State roadway system to determine the need, priorities, and scheduling for major maintenance, retreatment or resurfacing (subject to the Board's approval) in each engineering division;
- (10) determine the need for temporary traffic control devices for special events;
- (11) review and approve median opening requests;
- (12) review and approve civic, non-profit, or charitable organization safety rest stop activities;
- (13) handle and execute bicycle trails joint use rights of way;
- (14) consider and issue or deny permits for intermittent closing of secondary roads within watershed improvement projects;
- (15) issue special overweight and over-dimension permits;
- (16) authorize crop cultivation within rights of way;
- (17) authorize garbage collection container sites on rights of way;
- (18) authorize construction within the right of way;
- (19) permit construction of railroad tracks across any portion of the roadway system;
- (20) review, investigate and allow or deny contractor settlement claims for construction;
- (21) determine existence of emergency situation justifying the waiver of the bidding requirements as described in the general statutes;
- (22) promulgation, subject to discretionary review by the Secretary of Transportation, of those rules, regulations, and ordinances pertaining to highway matters as delegated by the Secretary of Transportation;
- (23) shall submit a priority list and or consult with Board of Transportation members in each major maintenance, retreatment or resurfacing project as requested by the Board members;
- (24) hold bid withdrawal hearings;
- (25) the State Highway Administrator is authorized and delegated to duty to submit applications to the Federal Emergency Management Agency and to execute the assurances and agreements and other documents on behalf of the Department of Transportation necessary for Federal Disaster Assistance, including the Designation of Applicants Agents, Assurances and Agreements, Damage Survey Reports and Requests for Payments. The Administrator is further authorized to subdelegate the authority and duty for Federal Disaster Assistance on behalf of the Department of Transportation to the Manager of the Maintenance and Equipment Branch.

*History Note: Statutory Authority G.S. 136-19; 136-18(5); 136-44.1; 136-30; 136-89.51; 136-71.9; 136-64.1(d); 136-93; 136-18.3; 136-18(11); 136-29; 136-28.1; 136-20-119; 143-29.1; 143B-10(j); 143B-350(f); 143B-350(g); 133-5 thru 17;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; October 1, 1991;  
January 1, 1986; August 1, 1982.*

## **SECTION .0200 - LEASE OR RENTAL OF PROPERTY**

### **.0202 FISCAL SECTION'S RESPONSIBILITY**

*History Note: Statutory Authority G.S. 146-25.1; 146-27; 146-32(2); 143B-350(f); 143B-350(g);*

*Eff. July 1, 1978;*

*Repealed Eff. November 1, 1991.*

## **SUBCHAPTER 2B - HIGHWAY PLANNING**

### **SECTION .0100 - RIGHT OF WAY**

#### **.0102 DELEGATION TO MANAGER AND ASSISTANT MANAGER**

The State Highway Administrator has delegated to the Manager of Right of Way Branch and Assistant Manager of Right of Way Branch the following powers and duties:

- (1) to negotiate and execute all documents pertaining to the acquisition of rights of way, borrow and local material deposits and of waste disposal areas and releases of such interests in borrow and local material deposits and waste disposal areas when no longer productive or useful for the purpose

## ***FINAL RULES***

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acquired; to release interests in land acquired for right of way, but not used nor needed for right of way;

- (2) to award and execute all contracts pertaining to the removal, relocation, alteration and sale of buildings and other improvements to be cleared from highway rights of way, borrow and waste disposal areas; such contracts shall be awarded to the lowest responsible bidder after competitive bidding;
- (3) to execute all certificates required in connection with the request to the U. S. Department of Transportation for reimbursement of right of way costs on federal-aid highway projects;
- (4) to execute all right of way encroachment agreements and contracts and utility relocation and cost reimbursement agreements;
- (5) to approve the payment of all claims for right of way, provided however all payments of claims in excess of five hundred thousand dollars (\$500,000) may be approved only by the State Highway Administrator or the Secretary of the Department of Transportation;
- (6) to negotiate and execute contracts with fee appraisers required for right of way appraisal;
- (7) to negotiate, enter into agreements, and execute documents in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and the regulations adopted and promulgated by the Board of Transportation;

**Note:** See Subchapter 2A, Rule .0102 for duties of the State Highway Administrator in relation to rights of way.

*History Note: Statutory Authority G.S. 133-5; 133-17;  
136-18(2); 136-18(10); 136-19; 143B-350B(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; October 1, 1991; June 1, 1985.*

### **.0104 GENERAL PROCEDURE UNDER RIGHT OF WAY ACQUISITION**

- (a) Each owner of property affected by right of acquisition will be contacted by:
  - (1) personal contact by a representative of the Department of Transportation if the owner resides within the state; or,
  - (2) mail and/or telephone if the owner resides outside of the state.
- (b) The representative of the Department of Transportation will carefully point out in detail to the property owner how the particular project is going to affect his property.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0107 APPRAISAL CONTRACTS**

- (a) All appraisal assignments, whether for appraisal, timber cruises, affidavits, specialty reports, cost estimates, or basic sales data, including all revisions and supplements, must be covered by the Department of Transportation Appraisal Contract.
- (b) The Department of Transportation uses a form called Appraisal Contract for agreements between independent real estate appraisers and the Board for the appraisal of the fair market value of land. This form requires description of the parcel to be appraised, the owner, type of appraisal, appraisal fee, and other conditions of the agreement. Copies of this form may be obtained from the Manager of Right of Way, Division of Highways, at no cost.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0108 NUMBER OF APPRAISALS**

Two or more appraisals may be obtained in any case where the nature of the taking and the appraisal problems are complex.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

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### **.0109 ACQUISITION OTHER THAN UNIMPROVED STATE SECONDARY ROADS**

*History note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

### **.0111 NEGOTIATION BY CORRESPONDENCE**

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

### **.0114 NEGOTIATION WITH DEPARTMENT OF TRANSPORTATION EMPLOYEES**

The following is the Department of Transportation's policy for acquiring right of way from Department of Transportation employees performing highway functions:

- (1) The appraisal of any property having damages in excess of two thousand five hundred dollars (\$2,500), owned by an employee of the Department of Transportation, be made by an independent fee appraiser, rather than a staff appraiser;
- (2) The Right of Way Review Board pass on the approval of the appraisal of any employee of the right of way branch, or any other employee of the Department of Transportation performing highway functions at salary grade 73 or above;
- (3) Right of way acquisitions may be negotiated at the approved appraisal with employees below salary grade 73;
- (4) Right of way acquired from any employee of the Department of Transportation performing highway functions at salary grade 73 or above shall not be acquired by negotiation but by the filing of a complaint and declaration of taking.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0121 RIGHT OF WAY DONATIONS**

Department of Transportation and Federal Highway Administration regulations will permit the Right of Way Branch to accept a donation of right of way without appraisals provided the owner is informed of his legal rights to receive just compensation.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0122 DISPOSITION OF IMPROVEMENTS PURCHASED BY THE BOARD**

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

### **.0123 SECONDARY ROAD RIGHT OF WAY**

The Department of Transportation, with the approval of the Board of Transportation, may acquire by condemnation secondary road rights of way.

*History Note: Statutory Authority G.S. 136-18(2); 136-18(26);  
136-29; 136-44.7;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0129 NO OBLIGATION OTHER THAN IN AGREEMENT WILL BE RECOGNIZED**

It is imperative that the right of way instrument(s) of conveyance specifically include all terms and conditions mutually agreed upon and that it reflect a complete agreement on all matters involved in the negotiation. No obligations other than those set forth in the instrument(s) will be recognized, and the

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performance of the terms and conditions contained therein relieves the Department of Transportation of any and all further obligations or claims.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0134 SETTLEMENT OF CLAIMS AFTER INSTITUTION OF SUIT AND DEPOSIT**

The following procedure will be followed for the closing of claims after the institution of suit both where the property owner agrees to take the amount deposited in full compensation or where it is agreed that an additional sum will be paid to property owner. These procedures generally apply only to settlement prior to the filing of answers by the property owner. Where an answer has been filed by the property owner, the transaction will be handled by the Department's trial attorney directly with the property owner's attorney.

- (1) Settlement of suit by withdrawal of deposit as full compensation: Upon notification from the property owner that he desires to withdraw the deposit in full settlement, the agent will fill out form "Application for Disbursement of Deposit as Full Compensation". The condemnee signs this form and the form permits the Department of Transportation to settle the suit by consent judgment.
- (2) Settlement of cases for an amount in excess of that deposited: In those cases where the Right of Way Agent receives authority from the Manager or Assistant Manager of Right of Way to settle a case for an amount in excess of that deposited, form "Agreement to Settle Right of Way Claim" shall be used. The condemnee signs this form and the form permits the Department of Transportation to settle the suit by consent judgment.

*History Note: Statutory Authority G.S. 136-18(2);  
136-19; 136-103; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0136 IMPROVEMENTS NOT TO BE MOVED**

In its acquisition program the Department of Transportation will acquire numerous buildings, particularly in urban areas, that are substandard and of such age and condition that they should not be sold for removal to nearby vacant property. In those instances where a moving permit will not be granted by the municipality, the building may still be offered for sale.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0138 DISPOSITION OF IMPROVEMENTS**

All improvements that are acquired in connection with the right of way are to be disposed of by one of the following methods:

- (1) resold to the property owner for the retention value placed upon the improvement by the appraisal,
- (2) sold by public sale or by a negotiated sale if no bids are received after proper advertisement,
- (3) demolished by the roadway contractor or by demolition contract,
- (4) retained by the Department for other public use,
- (5) sold to a displacee for replacement housing.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0139 PUBLIC SALE OF IMPROVEMENTS**

(a) Improvements acquired by the Department of Transportation that are not resold to the property owner may be disposed of by a public sale. The preferred method of sale is by means of sealed bids, after proper advertisement. In unusual situations it may be desirable to sell improvements by means of auction sale, but only after prior approval of the State Property Manager of the Right of Way Branch

in Raleigh. Sales of property must be advertised in a newspaper of general circulation in the county in which the property is located. The advertisement should appear in two consecutive issues of a daily or weekly paper. The date for opening bids should not be earlier than ten days after publication of the first advertisement.

(b) If no bids are received for the sale of improvements after proper advertisement, it will be permissible to negotiate the removal of an improvement with individuals interested in purchasing them.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

**.0143 THE SALE OF SURPLUS LANDS**

(a) Department of Transportation policy relative to disposal of remainder properties acquired in connection with acquisition of right of way is as follows:

- (1) The sale of all residues will be by public sale except as hereinafter specified.
  - (2) Residue properties sold by public sale are to be sold by either sealed bid, or by auction at the election of the right of way branch. The sale of such properties must be advertised by publication in a newspaper having general circulation in the county in which the property is situated. After opening bids or closing of auction, no upset bids will be considered. The high bid shall be presented to the Department of Transportation at its next regular meeting after the date of the sale for rejection or acceptance. The Department of Transportation reserves the right to reject all bids.
  - (3) Those residue properties located adjacent to controlled access projects that are landlocked may be sold to the adjoining property owner by negotiation rather than public sale for a consideration not less than the appraised value of the residue.
  - (4) Residue properties may be sold to state agencies and institutions and other governmental units by negotiation rather than public sale for a consideration not less than the appraised value of the residue.
  - (5) Surplus property acquired in connection with highway purposes may be used for the purpose of exchange with a public utility company in part or in full consideration for property to be acquired for highway purposes from the public utility company. Such exchanges shall be based on the appraised values of the surplus property and the property to be acquired for highway purposes. Residue property acquired in connection with right of way for a project may be used for the purpose of exchange in part or full consideration for right of way being acquired from another property owner on the project. Such exchanges to be based on the appraised values of the residue property and the right of way to be acquired.
  - (6) Residues which have an area of one-half acre or less or a value of one thousand dollars (\$1,000) or less and the highest and best use is for assemblage with adjacent property may be sold without advertising by negotiations to an adjoining owner. The Property Management Unit together with an area appraiser will determine the value of the residue based on its after value as indicated in the original appraisal, sales of similar properties and sales of other residues, if any, in the area. After a value has been established, the State Property Manager may negotiate with the adjoining owners concerning the disposal of each residue. The decision of the State Property Manager to accept and complete a sale is final.
  - (7) The Manager of Right of Way is delegated authority to dispose of residues with appraised values of less than one hundred dollars (\$100.00) by executing and delivering on behalf of the Department of Transportation, a quit claim deed to the buyers of such residues, after the transactions are first approved by the Board of Transportation. Conveyances of residues with appraised values of less than one hundred dollars (\$100.00) shall not require the approval of the Governor and Council of State.
  - (8) Residue properties or portions of residue properties acquired in connection with right of way for a project and located outside the right of way for that project may be sold by negotiation rather than by public sale to property owners and tenants who are displaced by the project for relocation of the displacee. Such sales are to be based upon the appraised value of the residue properties.
- (b) Should the Department of Transportation purchase a property in fee for right of way and later determine that the property is not needed for highway purposes, the offer of the original owner or his/her heirs or assigns to purchase the surplus right of way will be given first consideration. The purchase price for the property will be based upon the current market value of the property, as deter-

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mined by the Department of Transportation. Should the former owner or his/her heirs or assigns not desire to purchase the property, then the Department will dispose of the property in accordance with the Department's policy for the sale of residue property.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; February 1, 1988;  
November 1, 1986; August 1, 1982.*

### **.0144 RESALE OF RESIDUE TO ORIGINAL OWNER**

All sales of surplus lands, including but not limited to surplus rights of way, residues and uneconomic remnants, require the approval of the Board of Transportation, the Council of State and the Governor.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991.*

### **.0145 COPIES OF FORMS**

The following list contains forms which are used in the application of this Section to obtain information or forms that the individual must fill out to complete necessary action. Copies of these forms may be obtained from the Manager of Right of Way, Division of Highways at no cost.

- (1) Proposal and Contract for Rodent Control. This form is a contract that is to be completed by the contractor if someone wishes to bid on a rodent control contract. It will contain the parcel number on the project, the address of the property, and the contractor will fill in the amount of money in order for him to complete the contract. The form is to be signed by the contractor.
- (2) Management Agreement. This form is used by the Division of Highways to set up a contract with a management firm or individual for the renting of properties owned by the Department of Transportation. This form will contain the individual parcels, the agent involved, the amount of commission to be charged, and other items pertaining to the management of the property.
- (3) Rental Agreement. This form is an agreement that is between the individual renter and the Department of Transportation for the rental of property or buildings owned by the Department of Transportation. This form will contain the former owner's name, where the property is located, the amount of the rent, and other information pertaining to the rental of the property.
- (4) Bid Form for Sale and Removal of Buildings and Other Improvements From the Right of Way. This form is used by the Department of Transportation where buildings are purchased or retained by a property owner in the clearing of buildings from the right of way. This form will contain the description of the improvement to be sold, who it was formerly owned by, and the individual bidding or buying the property must sign it.
- (5) Proposal and Contract Forms. These proposal and contract forms are used for work to be performed by others such as demolition, or housemoving.
- (6) Contract Bond. There are two separate forms used by the Department of Transportation for individuals to complete in supplying a performance and payment bond for any work that requires a contract bond. These forms will be completed by the individual and companies supplying the contract bonds.
- (7) Proposal and Contract for Grave Removal. This form is used to outline the specific requirements in the removal of graves from a highway project.
- (8) Bid Form. This form is to be used for the bidding on real property which the Department of Transportation might sell. This could be used for residue properties or transfer of properties to another individual in the settlement of a claim.
- (9) Removal of Graves Certificate. This form is used to allow the contractor who is removing graves on a highway project to complete the agreement for grave removal.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0151 RAILROAD GRADE CROSSING SIGNS**

It is hereby ordained that whenever the Department of Transportation directs any railroad to protect its grade crossings by the erection of electric signals or other safety devices, the railroad so directed shall

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proceed to erect such electric signals or other safety devices as required in the order. Upon the installation and placing into operation of the signals or other safety devices as required in the order, any existing signals or other safety devices shall be removed by the railroad unless otherwise directed by the Department of Transportation.

*History Note: Statutory Authority G.S. 136-18(5); 136-18(11); 136-20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED**

That whenever any railroad changes the grades of its tracks where said tracks cross or intersect any road, street or highway of the State Highway System, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities, said adjustment of the road, street or highway being made in a manner approved by an authorized representative of the Department of Transportation. A minimum of ten feet runoff is required for each inch of difference in elevation between track grade and road grade unless otherwise approved by the Department of Transportation. The Department of Transportation may by cooperative agreement perform the asphalt run-off work on a 100 percent reimbursement basis.

*History Note: Statutory Authority G.S. 136-18(5); 136-18(11); 136-20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0163 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS**

(a) A roadway corridor official map, hereinafter referred to as "official map", is defined as a map, drawing or written description of a planned roadway alignment, with approximations of future right of way boundaries, which is adopted by the Board of Transportation for right of way protection purposes.

(b) The Division of Highways of the North Carolina Department of Transportation is responsible for the implementation of the procedures governing the adoption of official maps.

(c) The Department of Transportation shall conduct environmental studies or screenings prior to the adoption of an official corridor map as follows:

(1) If environmental studies are in the process of being conducted on a project being considered for an official map, then the adoption of the map must await the determination of the recommended alternative. In such cases, the public hearing required for a proposed official map or amendment under G.S. 136-44.50(a)(1) may be combined with the design public hearing.

(2) If environmental studies have not been conducted or are not underway for a project for which an official map is to be prepared, a preliminary environmental screening of the proposed alignment must be conducted to determine the environmental feasibility of the project.

(d) An official map illustrating the proposed project must be prepared prior to the initiation of the map adoption procedure. An official map must be of sufficient detail to clearly identify the proposed project in terms of functional design, location and preliminary right of way boundaries. The approximate property boundaries will be identified on the map and the names of the affected property owners at the time of the recording must be provided. All maps must be prepared in accordance with North Carolina Department of Transportation standards and the project alignments tied into the North Carolina State Coordinate Grid System.

(e) The Department of Transportation shall conduct a public hearing on the proposed map or an amendment to the existing adopted map prior to the adoption of an official corridor map or amendment as follows:

(1) The Public Hearing Officer of the Division of Highways, after the project has been selected and the official map has been prepared, will arrange the date and location of the public hearing on the proposed map or amendment as required by G.S. 136-44.50(a)(1). The date of the hearing must be determined in advance so as to allow sufficient time for the period of public notice which is required pursuant to G.S. 136-44.50(a)(1).

(2) In addition to the public hearing notice requirements established by G.S. 136-44.50(a)(1), the notice should indicate that copies of the proposed official map are available for review in the office of the District Engineer in whose jurisdiction the area which is the subject of the map is located.

- (3) The Public Hearing Officer will conduct the public hearing in accordance with customary practices and procedures which have been established by the Department for such hearings. Public comment at the hearing should be directed towards the designation of the subject project as an "official map" and any impacts created by such designation. Either a transcript of the public hearing or a summary of the comments made at the hearing will be prepared.
- (f) The Board of Transportation, following a review of the public hearing transcript or the summary of the comments made at the hearing, is empowered to adopt an official map at a Board of Transportation meeting.
- (g) In addition to the statutory requirements for the distribution and maintenance of official maps established by G.S. 136-44.50(b)(1), a copy of an official map adopted by the Board of Transportation will be maintained by the Director of Programs, Policy and Budget Branch of the Division of Highways and a copy will be provided to the building inspectors and planning officials in the jurisdictions affected by the map.
- (h) The procedures for the Department of Transportation's consideration of petitions for variances from requirements imposed by the adoption of an official corridor map are as follows:
- (1) Any property owner affected by an official map adopted by the Board of Transportation may petition for a variance from the requirements imposed by the statute (G.S. 136-44.51). A request for a variance should be directed to the Director of Programs, Policy and Budget Branch for consideration and processing. The property owner may either request that an administrative hearing be held in the county in which the affected property is located or may state the reasons for and supply any evidence supporting the variance request in writing to the Director of Programs, Policy and Budget Branch. In instances where a hearing is scheduled pursuant to a request for a variance, the Director of Programs, Policy and Budget Branch will provide written notice of the hearing to the mayor of any affected city or the chairman of the board of commissioners of any affected county, in accordance with G.S. 136-44.52(b).
- (2) Upon consideration of the facts and circumstances pertaining to the petition for a variance as determined from evidence provided by the property owner, the Director of Programs, Policy and Budget Branch may grant a variance, recommend the subject property be considered for advance acquisition, or deny the request. A written record of the decision will be provided to the petitioning property owner within 30 days of the date of the hearing or the date of the receipt of the written request for the variance.
- (3) If the petitioning property owner receives an unfavorable ruling from the Director of Programs, Policy and Budget Branch concerning the variance request, he or she may request a review of the case by the State Highway Administrator. The State Highway Administrator will evaluate the case and provide a final administrative decision in writing within 30 days of the date of the receipt of the review request.
- (i) Any property located within a designated roadway corridor may be considered for advance acquisition prior to the expiration of the three year time period established in G.S. 136-44.51(b), if the circumstances meet the criteria or a hardship acquisition, as defined in the existing advance acquisition policies of the Division of Highways' Right of Way Branch, hereby incorporated by reference. All request for such advance acquisition should be in writing, include all supporting documentation, and be submitted to the Director of Programs, Policy and Budget Branch.

*History Note: Statutory Authority G.S. 136-33.53; 136-44.50; 136-44.51; 136-44.52;  
Eff. October 1, 1991;*

#### **.0164 USE OF RIGHT OF WAY CONSULTANTS**

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department. These Rules and Regulations are established as a guide for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of these Rules and Regulations may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when deviations from portions of these Regulations are justified.

These Rules and Regulations have been developed in response to and in accordance with, the following directives and requirements:

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- (1) General Statute 136-28.1(f);
- (2) 23 CFR 172, the FHWA regulations governing procurement of professional services;
- (3) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements;
- (4) Office of Management and Budget (OMB) Circular A-102, Section 36, "Procurement." (Revised version announced in Presidential memo dated March 12, 1987.);
- (5) NCDOT Title VI Compliance Program.

All personnel involved with contracts for right of way acquisition services shall comply with G.S. 133-32 and the Department of Transportation Personnel Manual, Section VI, entitled "Employee Relations".

(b) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Right of Way Special Projects Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
- (2) Cost per Unit of Work - A method of compensations based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workman compensation and other such benefits.
- (8) Proposal - An expression of interest by a firm for performing specific work or services for the Department.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A formal amendment which modifies the terms of an existing contract.
- (11) Termination Clause - A contract clause which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(c) Application. These Rules and Regulations shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(d) Right of Way consultant selection committee. The Committee shall consist of the Branch Manager, Assistant Branch Managers, Unit Heads, and the Right of Way Special Projects Administrator and shall be chaired by the Branch Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(e) Pre-qualification of firms - general agreement. On a yearly basis, the Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation. The advertisement will be published in the North Carolina Purchase Directory and/or the legal section of major newspapers. The response time will normally be two weeks after the advertising date. The response shall include the Federal Government's Forms 254 and 255, copies of the firms latest brochures, and such similar information. Additional firms may be considered for pre-qualification during the yearly period if they so request.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Possesses a high ethical and professional standing;
- (2) Responsible personnel shall be recognized professionals in the field(s) of expertise required by the contract;
- (3) Adequate experience in the field(s) of expertise required by the contract;
- (4) Adequacy in both number and quality of staff to perform the required services;

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- (5) Ability to meet the time schedule established for the work;
- (6) Financial ability to undertake the proposed work;
- (7) Adequacy of the firm's accounting system to identify costs chargeable to the project;
- (8) Past performance by the firm on previous contracts with the Department of Transportation;
- (9) Any other data pertinent to the contract under consideration;
- (10) When pertinent, the firm shall possess the quality of equipment necessary to perform the required services to the standards acceptable to the Selection Committee.

All firms meeting the qualifications in Paragraphs (e)(1) through (e)(10) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation and a General Agreement shall be executed with each firm for a term covering the following year after review and acceptance of fixed billable rates by the Fiscal Section. Additional firms pre-qualifying during the yearly period shall execute a General Agreement for the remainder of the yearly period.

(f) Fixed billable rates. The annual General Agreement will not be executed until the fixed billable rates submitted as Appendix E to the General Agreement have been reviewed by the External Audit Branch of the Department's Fiscal Section. The review will verify the accuracy of the proposed fixed billable rates based upon an examination of the average wage rates by employee classifications, overhead rates, as well as limitations on compensation and indirect salaries, wages and fringe benefits.

In order to perform the examination of Appendix E rates, the firm will be required to submit an analysis showing the computation of the average wage rate per classification with supporting documentation for the salary and wage rates used (i.e., payroll register, check stubs, etc.). The overhead rate shall be based upon the current completed year and audited by a State/Federal Agency. If unaudited, the firm must submit a detailed computation of overhead accompanied by a chart of accounts, financial statement, and statement of employment policy.

(g) Register of pre-qualified firms. The Right of Way Special Projects Administrator will be responsible for maintaining a "Register of Pre-Qualified Firms" which have executed a General Agreement to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(h) Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way is responsible for determining when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Manager to solicit proposals for the work. The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

- (1) non-availability of manpower,
- (2) lack of expertise, or
- (3) other reasons.

(i) Solicitations of specific project proposals. Specific Project Proposals will be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal. The Right of Way Special Projects Administrator, upon the approval of the Manager of Right of Way, shall be responsible for preparing the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms shall attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(j) Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel and their qualifications who are currently available to perform right of way acquisition services on the specific project; and

(3) The ability of the firm to complete the work on time according to the Department's schedule. Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office in North Carolina; and may, at the discretion of the Department, be required to establish the office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel. After the authorization to proceed to negotiations is given by the Branch Manager, the Right of Way Special Projects Administrator shall notify the firm chosen by the Selection Committee.

(k) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Special Projects Administrator shall prepare an estimate of the cost of performing the work in-house. This estimate will be used in evaluating the acceptability of the selected firm's cost proposal. The format used for preparation of the in-house estimate will vary depending on the type of work required. Generally it will include an estimate of the manhours required, broken down by classifications, converted to a cost estimate by the application of the appropriate salaries. Payroll additives (provided by the Fiscal Section), overhead and an estimate of the necessary direct expenses should be included. This in-house estimate shall be documented, easy to review and permanently retained in the project files.

If considered necessary by the Right of Way Special Projects Administrator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions should include:

- (1) Policies used by the Department for the type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and or services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy of the Right of Way Special Projects Administrator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by signature of the Right of Way Special Projects Administrator and an approved copy will be returned to the firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a detailed breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review will be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. Where further negotiations are required, they shall be the responsibility of the Right of Way Special Projects Administrator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by External Audit Unit. The Right of Way Special Projects Administrator with the concurrence of the Manager of Right of Way shall approve the final fee.

If acceptable contract cannot be negotiated, negotiations will be terminated, the firm will be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(l) Board of Transportation approval and execution of contract. Upon completion of final negotiations, the firm shall execute a minimum of two contract originals.

The contract shall then be submitted to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The proposed contract will then be submitted to the Board of Transportation for approval.

Upon approval by the Board of Transportation the contract will be executed by the Manager of Right of Way and returned to the Right of Way Special Projects Administrator. The Right of Way Special Projects Administrator will transmit one original contract to the contracting firm and shall retain one in the project file. A copy of the contract will be provided to the Manager of the Program and Policy

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Branch, copy to be the Department's Fiscal Section and copy to the Federal Highway Administration when federal-aid funds are involved.

(m) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Special Projects Administrator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor will be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(n) Methods of compensation:

(1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be clearly defined and understood by both the Department and the contracting firm.

(2) Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined clearly and the Department needs more flexibility in expediting the work without excessive amendments to the contract.

(3) Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(4) Cost Plus a Percentage of Cost - This method of compensation shall not be used.

(o) Administration of contract. The administration of the contract shall be the responsibility of the Right of Way Special Projects Administrator. This will include the review of invoices and recommendation for payment to the Fiscal Section.

(p) Contract Amendments. Each contract should contain procedures for contract modifications and define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

The Right of Way Special Projects Administrator with the concurrence of the Manager of Right of Way may authorize changes involving minor details of clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of work, or which causes a change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds a compensation for services, the contract amendment must be approved by the Federal Highway Administration. No work is to be performed by the contracting firm on additional or disputed items until the dispute is resolved and/or a contract amendment is executed. Contract amendments shall be processed using the same procedures as described in Subparagraphs (b)(10) and (b)(11) of this Rule.

(q) Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way Special Projects Administrator.

(r) Final payment. When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Special Projects Administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(s) Termination of contracts. All contracts shall include a provision for the termination of the contract by the Department with prior notice to the contracting firm.

(t) Quarterly report. A quarterly report on the use of outside firms will be submitted to the Right of Way Branch Manager. This report shall be prepared by the Right of Way Special Projects Administrator and will be in chart/graphic or other appropriate format. Copies shall be provided to the State Highway Administrator and the Assistant State Highway Administrator.

*History Note: Statutory Authority G.S. 136-28.1(f);  
Eff. November 1, 1991.*

### **.0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS**

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules and Regulations are established as a guide for the preparation, execution and administration of contracts for Asbestos Inspections, Asbestos Removals, and Structure Clearings by consultant firms that are over ten thousand dollars (\$10,000.00).

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Due to the diversity of contract types, some portions of these Rules and Regulations may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining deviations from portions of these Regulations are justified. Any deviation from these Rules will require approval of FHWA if Federal Funds are involved in the project.

These Rules and Regulations have been developed in response to and in accordance with the following directives and requirements:

- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.
- (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.
- (3) 49 CFR 18.36, USDOT contracting regulations.
- (4) NCDOT Title VI Compliance Program.

All personnel involved with contracts for Asbestos Inspections, Asbestos Removals and Structure Clearings shall comply with G.S. 133-31 and the Department of Transportation Personnel Manual, Section VI, entitled "Employee Relations".

(b) **DEFINITIONS.** The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) **Contract Administrator** - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (2) **Cost per Unit of Work** - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) **Cost Plus Fixed Fee** - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) **Cost Proposal** - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) **Firm** - Any private agency, firm, organization, business or individual offering qualified Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (6) **Lump Sum** - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) **Payroll Burden** - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) **Proposal** - An expression of interest by a firm for performing specific work or services for the Department.
- (9) **Scope of Work** - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) **Contract Amendment** - A formal amendment which modifies the terms of an existing contract.
- (11) **Termination Clause** - A contract clause which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(c) **APPLICATION.** These Rules and Regulations shall apply to all Retainer contracts for Asbestos Inspections, Asbestos Removals, and Structure Clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(d) **SELECTION COMMITTEE.** The Committee shall consist of the Right of Way Branch Manager or his designated Representative, the State Relocation Agent and Property Manager or his designated Representative, and at least one employee of the Department's Preconstruction Unit and/or Construction Unit Professional Staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his Representative.

(e) **SELECTION OF FIRMS.** On a yearly basis (or as needed), the Department shall advertise for firms interested in performing Asbestos Inspections, Asbestos Removals, and Structure Clearings for the North Carolina Department of Transportation. The advertisement will be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Environment, Health, and Natural Resources - Occupational Health Section Asbestos Pro-

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gram to perform Asbestos Inspections, copies of the firms latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Possesses a high ethical and professional standing (10%);
- (2) Responsible personnel shall be recognized professionals in the field(s) of expertise required by the contract and shall possess all required State and Federal Certifications (20%);
- (3) Adequate in both number and quality of staff to perform the required services (10%);
- (4) Adequacy in both number and quality of staff to perform the required services (10%);
- (5) Ability to meet the time schedule established for the work (10%);
- (6) Financial ability to undertake the proposed work (10%);
- (7) Adequacy of the firms accounting system to identify costs chargeable to the project (10%);
- (8) Performance by the firm on previous contracts with the Department of Transportation (10%);
- (9) Any other data pertinent to the contract under consideration (5%);
- (10) When pertinent, the firm shall possess the quality of equipment necessary to perform the required services to the standards acceptable to the Selection Committee (5%).

The Selection Committee shall, on the basis of the criteria of Subparagraphs (e)(1) through (e)(10) of this Rule, select eight firms and two alternates for contract negotiations.

(f) REQUEST FOR PROPOSALS. Each Selected Firm and Alternate will be requested by the Contract Administrator to submit a Proposal which provides for:

- (1) a per unit cost for Asbestos Inspections which may be required by the Department during the year's term of the contract;
- (2) a per square foot cost and a per running foot cost for removing any asbestos material located in the inspections process; and
- (3) a unit price for general clearing of an improvement from 2,000 - 5,000 square feet; a unit price for general clearing of an improvement from 2,000 - 5,000 square feet; a unit price for general clearing of an improvement over 5,000 square feet.

The Proposal Request shall state that the Department intends to enter into a Retainer Contract for the term of one year and up to a maximum amount of two hundred and fifty thousand dollars (\$250,000.00) each with eight firms on a Statewide basis to perform Asbestos Inspections, Asbestos Removal, and Structure Clearing on an as needed basis.

(g) NEGOTIATION OF CONTRACTS. Upon receipt of the Proposals from the right Selected Firms and two Alternates negotiations shall be initiated with the eight Selected Firms to produce a Retainer Contract with a term on one year and maximum amount of up to two hundred and fifty thousand dollars (\$250,000.00). Should negotiations fails to reach successful execution of a contract with any Selected Firm, they will be terminated and negotiations will be initiated with an Alternate Firm.

The object of the negotiations shall be to establish an acceptable per unit cost for any Asbestos Investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements.

When agreement is reached on the unit costs, a Retainer Contract shall be executed with the eight Selected Firms for the term of one year which provides for the scope of services enumerated in this Rule.

(h) BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT. Upon completion of final negotiations, the firm shall execute a minimum of two contract originals.

The contract shall then be submitted to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The proposed contract will then be submitted to the Board of Transportation for approval.

Upon approval by the Board of Transportation the contract will be executed by the Manager of Right of Way and returned to the Contract Administrator. The Contract Administrator will transmit one original contract to the contracting firm and shall retain one original in the Central Office. A copy of the contract will be provided to the Department's Fiscal Section.

(i) REQUEST FOR SPECIFIC JOB ESTIMATES. When the Department acquires Structures that require inspection for asbestos, two firms who have executed the Retainer Contract will be contracted by the Right of Way Branch, given the location of the Structure(s), and requested to submit an Work Assignment Cost Estimate. The first Firm's estimate shall cover Inspections, both preliminary and final; and the second Firm's Estimate shall be for Abatements, if any, and Clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor will be reviewed by Right of Way Staff Personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the Retainer Contract; and

(2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the Contract Administrator shall authorize the work by the Firm under the Retainer Contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the Firm, an Estimate will be requested from another Firm on Retainer Contract and evaluated in the same manner until agreement is reached and work can be authorized.

(j) **SUB-CONTRACTING.** A Contracting Firm may sublet portions of the work proposed in the contract only upon approval of the Contract Administrator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor will be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(k) **METHODS OF COMPENSATION.** Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(l) **ADMINISTRATION OF CONTRACT.** The administration of the contract shall be the responsibility of the Contract Administrator. This will include the review of invoices and recommendation for payment to the Fiscal Section.

(m) **CONTRACT AMENDMENTS.** Each contract should contain procedures for contract modifications and define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

The Contract Administrator with the concurrence of the Manager of Right of Way may authorize changes involving minor details or clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of work, or a change in the amount of compensation. The Department reserves the right with the concurrence of the Manager of Right of Way to delete any clearing item.

No work is to be performed by the contracting firm on additional or disputed items until the dispute is resolved and or a contract amendment is executed. Contract amendments shall be processed using the same procedures as described in Subparagraphs (e)(7) and (e)(8) of this Rule.

(n) **MONITORING OF WORK.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office.

The firm will be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(o) **FINAL PAYMENT.** When it is determined that the work is complete, the final invoice shall be approved by the Contract Administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

Should the firm believe that additional compensations and or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 30 days after receipt of final payment. The Department will render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(p) **TERMINATION OF CONTRACTS.** All contracts shall include a provision for the termination of the contract by the Department with proper notice to the contracting firm.

(q) **QUARTERLY REPORT.** A quarterly report on the use of outside firms will be submitted to the Right of Way Branch Manager. This report shall be prepared by the Contract Administrator and will be in chart graphic or other appropriate format. Copies shall be provided to the State Highway Administrator and the Assistant State Highway Administrator.

*History Note: Statutory Authority G.S. 130A-444; 130A-451; 136-28.1(f);  
Eff. November 1, 1991.*

## **SECTION .0200 - TRAFFIC ENGINEERING**

### **.0201 DELEGATION BY STATE HIGHWAY ADMINISTRATOR**

The State Highway Administrator delegates to the Manager of Traffic Engineering the authority to authorize spot safety improvement funds for primary, secondary and urban safety improvements up to

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seventy-five thousand dollars (\$75,000); that any improvements over seventy-five thousand dollars (\$75,000) will continue to be approved or denied by the State Highway Administrator.

*History Note: Statutory Authority G.S. 136-18(5); 136-30; 136-44.1; 136-54; 136-89.53;  
Eff. January 1, 1986;  
Amended Eff. October 1, 1991.*

### **.0202 DEFINITIONS**

The following terms shall have the ascribed meaning throughout this Section:

- (1) Traffic Control Device. A traffic control device is any sign, signal, marking, channelization, islands or installation placed or erected under public authority, for the purpose of regulating, warning, or guiding traffic.
- (2) State Highway System. Those streets and highways as described in the General Statutes of North Carolina, Chapter 136, Articles 3 and 3A.
- (3) Municipality. An incorporated city or town.
- (4) State Municipal System Street or Highway. Any street or highway on the State Highway System within a municipality.
- (5) Non-State System Municipal Street or Highway (Municipal System). Those streets and highways accepted by the municipality which are not a part of the State Highway System. The municipality shall be responsible for the maintenance, construction, and reconstruction of this system.
- (6) State Rural System Highway or Street. Any highway or street on the State Highway System outside the limits of a municipality.
- (7) Board. North Carolina Board of Transportation.
- (8) Manual on Uniform Traffic Control Devices. Manual on Uniform Traffic Control Devices for Streets and Highways, published by the U. S. Department of Transportation, Federal Highway Administration, and approved by the Board of Transportation.
- (9) Titles. The titles Manager of Traffic Engineering and State Traffic Engineer used in this Section are synonymous.
- (10) North Carolin Supplement to the Manual on Uniform Traffic Control Devices. Supplement to the Manual on Uniform Traffic Control Devices published by the North Carolina Department of Transportation, and approved by the Board of Transportation.

*History Note: Statutory Authority G.S. 136-18; 136-20; 136-45; 136-66.1;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0203 RESPONSIBILITY FOR TRAFFIC CONTROL DEVICES**

(a) Installation and Maintenance -- General. The Department of Transportation is responsible for the installation and maintenance of all traffic control devices on all highways and streets on the State Highway System necessary for regulating, warning, or guiding traffic. Such devices must be in substantial conformance with the Manual on Uniform Traffic Control Devices, or any subsequent revisions of the same, and any Department of Transportation approved supplements to, or interpretations thereof. The initial installation of traffic control devices shall be the result of an engineering evaluation conducted under the direction of the Manager of the Traffic Engineering Branch, Division of Highways, Department of Transportation.

(b) A municipality may install, erect, or alter, traffic control devices on State Highway System streets at its own expense, provided the devices are in substantial conformance with the "Manual on Uniform Traffic Control Devices", and the "North Carolina Supplement to the Manual on Uniform Traffic Control Devices", and such devices have approval of the Department of Transportation prior to their installation or alteration:

- (1) The cost of installing or erecting new traffic control devices and the cost of altering existing traffic control devices to conform to the "Manual on Uniform Traffic Control Devices", and the "North Carolina Supplement to the Manual on Uniform Traffic Control Devices", shall be paid for by the Department of Transportation unless otherwise agreed to by written agreement between the municipality and the Board of Transportation.
- (2) The municipality will pay for the adjustment of all utilities necessary for the installation, erection, or alteration of traffic control devices unless otherwise provided for by written agreement between the municipality and the Department of Transportation.

(c) The Department of Transportation may upon written agreement (Municipal Maintenance Agreement for Traffic Control Devices) assign the responsibility for all or part of the maintenance of traffic control devices to a municipality. Such maintenance performed by the municipality must be to standards acceptable to the Department of Transportation and in conformance to the "Manual on Uniform Traffic Control Devices", and the North Carolina Supplement to the Manual on Uniform Traffic Control Devices. The municipality will be reimbursed by the Department of Transportation for maintenance work performed under the terms of the agreement. A written agreement for maintenance work to be performed by a municipality shall remain in full force and effect for such period of time as the Department of Transportation and the municipality deem necessary and may be terminated by either party upon 30 days written notice.

*History Note: Statutory Authority G.S. 20-158; 20-158.1; 20-169; 136-18; 136-30;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

#### **.0208 UNIFORM TRAFFIC CONTROL DEVICES**

(a) The United States Department of Transportation publishes a volume entitled "Manual on Uniform Traffic Control Devices". This publication has been adopted by the Federal Highway Administrator as a national standard that is applicable to all classes of highways. This volume contains standards for the design and deployment of traffic control devices. The 1988 edition including any subsequent revisions or editions of the same is hereby adopted and incorporated by reference pursuant to G.S. 150B-14 (a) and (c).

(b) Copies are available for inspection in the office of the State Traffic Engineer, Traffic Engineering Branch, Raleigh, N. C. Copies of the manual may be obtained from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, for an established fee.

*History Note: Statutory Authority G.S. 20-158; 20-169; 136-18(5); 136-30;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; January 1, 1986; April 3, 1981.*

#### **.0235 CUSTODIAN AND LOCATION OF TRAFFIC ORDINANCES**

*History Note: Statutory Authority G.S. 136-18(5); 150A-63(c);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

### **SECTION .0300 - PLANNING AND RESEARCH**

#### **.0306 ESTABLISHING ELIGIBILITY - POWELL BILL**

Annually as of July 1, each participating municipality shall establish its eligibility for an allocation. Towns incorporated prior to January 1, 1945, must submit a certified statement which provides information on the municipality's most recent election for the purpose of electing municipal officials, ad valorem taxes, or other provisions for funding the general operating expenses of the municipality; and the mileage of its legally qualified, municipality maintained streets. In addition, towns incorporated on or after January 1, 1945, must also include in their certified statement information on their:

- (1) ad valorem taxes;
- (2) budget ordinance; and
- (3) services provided.

In all cases, the statement must be certified by the mayor and city clerk with the mileage certified by a registered professional engineer or a registered land surveyor. To support the mileage claimed on the certified statement, a street map, certified by a registered land surveyor or registered professional engineer, which clearly shows the claimed local city streets is required. If there have been no changes in mileage from the previous year, only certifications by the mayor and city clerk is required. Forms and instructions are available from the Manager of Planning and Environmental Branch, North Carolina Division of Highways, Raleigh, 27611.

*History Note: Statutory Authority G.S. 136-41.1; 136-41.2; 143B-350(f),(g);  
Eff. July 1, 1978;*

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*Amended Eff. November 1, 1991.*

### **.0313 PROGRAMMING - PL FUNDS**

The expenditure of PL Funds by each organization shall be supported by a planning work program setting forth the transportation planning work to be undertaken. Approval of the program by the Department of Transportation and the United States Department of Transportation is required.

*History Note: Statutory Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-250(f), (g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

## **SECTION .0400 - RELOCATION ASSISTANCE PROCEDURES**

**Note:** The Department publishes a "Relocation Assistance Brochure" which contains the information normally needed by a person being relocated. The brochure is available free from any Division of Highways Right of Way Relocation Office.

### **.0401 DEFINITIONS**

### **.0402 PURPOSE**

### **.0403 ELIGIBILITY FOR STATE AND FEDERAL FUNDS**

### **.0404 APPLICABILITY**

### **.0405 ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM**

### **.0406 PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED**

### **.0407 ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS**

### **.0408 PUBLIC NOTICE OF AVAILABILITY OF SERVICE**

### **.0409 INITIAL CONTACT WITH DISPLACEE**

### **.0410 NOTICE TO FINANCIAL INSTITUTIONS**

### **.0411 NINETY DAYS WRITTEN NOTICE**

### **.0412 REVIEW PROCEDURES**

### **.0413 SEVERED IMPROVEMENTS**

### **.0414 REQUEST FOR PROPERTY INSPECTION**

### **.0415 AGENCY RESPONSIBILITY**

### **.0416 MOVING COST**

### **.0417 GUIDELINES FOR HOUSEHOLD MOVES**

### **.0418 MOVING PAYMENTS TO BUSINESSES**

### **.0419 ADVERTISING SIGNS**

### **.0420 REPLACEMENT HOUSING PAYMENTS**

### **.0421 REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANT**

### **.0422 PAYMENT TO OWNER-OCCUPANTS FOR 180 DAYS OR MORE WHO RENTS**

### **.0423 REPLACEMENT HOUSING PAYMENT TO OWNER (SHORT TERM OWNER)**

### **.0424 PAYMENT TO OWNER-OCCUPANTS FOR 90 DAYS WHO RENTS**

### **.0425 PAYMENT TO TENANT-OCCUPANT FOR 90 OR MORE DAYS WHO RENTS**

### **.0426 PAYMENT TO TENANT-OCCUPANT 90 OR MORE DAYS WHO PURCHASES**

### **.0427 PAYMENT TO TENANT OF A SLEEPING ROOM 90 OR MORE DAYS**

### **.0428 MOBILE HOMES**

### **.0429 SUBSEQUENT OCCUPANTS**

### **.0430 HOUSING AS A LAST RESORT**

### **.0431 COPIES OF FORMS**

*History Note: Statutory Authority G.S. 133-6; 133-7; 133-8; 133-9;  
133-10; 133-10.1; 133-11; 133-14; 133-146;  
136-18(2); 136-19; 143B-350 (a), (f);  
Eff. April 3, 1981;  
Repealed Eff. November 1, 1991.*

### **.0432 RESERVED FOR FUTURE CODIFICATION**

### **.0433 RESERVED FOR FUTURE CODIFICATION**

### **.0434 RESERVED FOR FUTURE CODIFICATION**

- .0435 RESERVED FOR FUTURE CODIFICATION**
- .0436 RESERVED FOR FUTURE CODIFICATION**
- .0437 RESERVED FOR FUTURE CODIFICATION**
- .0438 RESERVED FOR FUTURE CODIFICATION**
- .0439 RESERVED FOR FUTURE CODIFICATION**
- .0440 RESERVED FOR FUTURE CODIFICATION**

**.0441 DEFINITIONS**

- (a) The term business means any lawful activity except a farm operation that is conducted:
  - (1) primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and or marketing of products, commodities and/or any other personal property; or
  - (2) primarily for the sale of services to the public; or
  - (3) primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
  - (4) by a non-profit organization that has established its non-profit status under applicable federal or state law.
- (b) The term comparable replacement dwelling means a dwelling which is:
  - (1) decent, safe, and sanitary as further described;
  - (2) functionally equivalent to the displacement dwelling;
  - (3) adequate in size to accommodate the occupants;
  - (4) in an area not subject to unreasonable adverse environmental conditions;
  - (5) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
  - (6) on a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as out-buildings, swimming pools, or greenhouses;
  - (7) currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance;
  - (8) within the financial means of the displaced person:
    - (A) a replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to the initiation of negotiations is considered to be within the homeowner's financial means if the homeowner is paid the full price as further described, all increased mortgage interest costs as further described and all incidental expenses as further described, plus any additional amount required to be paid under last resort housing.
    - (B) a replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.
    - (C) for a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income. Such rental assistance must be paid under Replacement Housing of Last Resort.
- (c) The term contributes materially means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other periods as the Department determines to be more equitable, a business or farm operation:
  - (1) has an average annual gross receipts of at least five thousand dollars (\$5,000); or
  - (2) had an average annual net earnings of at least one thousand dollars (\$1,000); or
  - (3) contributed at least 33 1/3 percent of the owners or operators average annual gross income from all sources.
  - (4) If the application of the criteria in Paragraphs (a), (b), and (c) of this Rule creates inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.
- (d) The term decent, safe and sanitary dwelling means dwelling that meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code such

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following standards shall apply, unless waived. Such waiver must be obtained from the Raleigh Central Office. The dwelling shall:

- (1) Be structurally sound, weathertight, and in good repair.
- (2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.
- (3) Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees for a displaced person, except in those areas where local climate conditions do not require such a system.
- (4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet all in good working order and properly connected to appropriate sources of water and to a sewage draining system. In the case of a house-keeping dwelling there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
- (5) Contains unobstructed egress to safe open space at ground level. If the replacement dwelling unit is on the second story or above with access directly from or through a common corridor, the common corridor must have at least two means of egress.
- (6) For a handicapped displacee, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by a displaced person who is handicapped.
- (e) The word "Department" means the North Carolina Department of Transportation.
- (f) The term displaced person means any person who moves from the real property or moves his or her personal property from the real property (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act.):
  - (1) as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;
  - (2) as a direct result of rehabilitation or demolition for a project; or
  - (3) as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person applies only for purposes of obtaining relocation assistance advisory service and moving expenses.
- (g) The following is a non-exclusive listing of persons who do not qualify as a displaced person under these regulations:
  - (1) a person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the program or project;
  - (2) a person who initially enters into occupancy of the property after the date of its acquisition for the project;
  - (3) a person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
  - (4) a person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Department in accordance with any guidelines established by the Federal agency funding the project;
  - (5) an owner-occupant who moves as a result of an acquisition that is not subject to the requirements of the Uniform Act or as a result of the rehabilitation or demolition of the real property (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for Federal or federally-assisted project is subject to the Uniform Act);
  - (6) a person who the Department determines is not displaced as a direct result of a partial acquisition;
  - (7) a person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
  - (8) an owner-occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Department will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations;

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- (9) a person who retains the right of use and occupancy of the real property for life following its acquisition by the Department;
- (10) a person who is determined to be in unlawful occupancy prior to the initiation of negotiations or a person who has been evicted for cause under applicable law.
- (h) The term dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
- (i) The term farm operation means any activity conducted solely and primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (j) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.
- (k) Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiation" means the following:
  - (1) Whenever the displacement results from the acquisition of the real property by the Department, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Department to the owner or the owner's representative to purchase the real property for the project. However, if the Department issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.
  - (2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.
  - (3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal of federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.
- (l) The term "lead agency" means the N.C. Department of Transportation.
- (m) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State, together with the credit instruments, if any, secured thereby.
- (n) The term "nonprofit organization" means an organization that is incorporated under the applicable laws of the State as a nonprofit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code.
- (o) Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance is a written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.
- (p) A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:
  - (1) fee simple, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
  - (2) an interest in a cooperative housing project which includes the right to occupy a dwelling; or
  - (3) a contract to purchase any of the interests or estates described in this Rule; or
  - (4) any other interest, including a partial interest, which, in the judgement of the Department warrants consideration as ownership.
- (q) The term person means any individual, family partnership, corporation, or association.
- (r) The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.
- (s) The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period

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of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) The term "small business" is a business having at least one, but not more than 500, employees working at the site being acquired or displaced by a program or project.

(u) The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(v) The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Department has determined has little or no value or utility to the owner.

(w) A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. The Department may, at its discretion, consider such a squatter to be in lawful occupancy.

(x) The term "utility costs" means expenses for heat, lights, water and sewer.

*History Note: Statutory Authority G.S. 133-7; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0442 PURPOSE**

(a) To ensure that owners of real property to be acquired for State and Federal assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in State and Federal assisted land acquisition programs.

(b) To ensure that persons displaced as a result of State and Federal assisted projects are treated fairly, consistently, and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

*History Note: Statutory Authority G.S. 133-6; 133-9; 133-10; 133-14;  
143B-350(f);  
Eff. November 1, 1991.*

### **.0443 ELIGIBILITY FOR STATE AND FEDERAL FUNDS**

(a) State and federal funds may be used for relocation payments to eligible persons when all of the following conditions have been met:

- (1) There has been approval of a state or federal-aid program or project and authorization to proceed has been issued.
- (2) When in fact a person has been or will be relocated by the right of way approval for such project.
- (3) When relocation costs are lawfully incurred.
- (4) When relocation costs are recognized and recorded as a liability of the state.

(b) The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient to cause displacement.

(c) The state shall not withhold all or any part of any relocation payment to the displacee to satisfy their obligation to the state.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0444 APPLICABILITY**

The following criteria sets forth those highway projects for which relocation benefits are available:

- (1) all federal-aid highway projects involving right of way on which individuals, families, businesses, farm operations and non-profit organizations have not been displaced prior to March 5, 1977;
- (2) all state highway projects involving right of way, and on which it is anticipated federal funds will be required for any subsequent stage of the project, on which individuals, families, businesses, farm operations and non-profit organizations have not been displaced prior to March 5, 1977;
- (3) all state highway projects involving right of way on which individuals, families, businesses, farm operations, and non-profit organizations have not been displaced prior to March 5, 1977, except

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that, these provisions shall not apply to those secondary roads projects consisting of paving or otherwise improving unpaved secondary roads.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0445 ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM**

The Department of Transportation has given to the Federal Highway Administration adequate assurances that on federally assisted projects that:

- (1) Relocation payments and services were or will be provided.
- (2) The public was or will be adequately informed of the relocation payments and services which will be available.
- (3) To the greatest extent practicable, no person lawfully occupying real property shall be required to move from their dwelling or to move their business or farm operation without at least 90 days written notice from the state of the date by which such move is required.
- (4) Assurances for individual projects will be included as follows:
  - (a) Within a reasonable period of time prior to displacement, comparable replacement dwellings will be available or provided for displaced individual and families who are initial occupants; or
  - (b) Adequate replacement dwellings will be available or provided for displaced individuals and families who are subsequent occupants;
  - (c) The Department has a realistic relocation program which is adequate to provide orderly, timely and efficient relocation of displaced persons as provided.

*History Note: Statutory Authority G.S. 133-14; 136-18(2); 136-19;  
143B-350(a);  
Eff. November 1, 1991.*

### **.0446 PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED**

(a) Advisory services are available to displaced person on the project, as well as those persons occupying property immediately adjacent to property acquired for a highway project, provided the Manager of Right of Way determines that such person is entitled to said services.

(b) A displaced person can refuse relocation services and still be eligible for payments. There is no requirement that the displacee accept services if they desire to relocate on their own. It will be necessary, however, that the decent, safe, and sanitary requirements be met and proper application within the time limits be made to qualify for payments. Losses due to negligence of the relocated person, their agent, or employees, are not eligible for reimbursement.

(c) Advisory services shall be offered to any person (without regard to race, color, religion, sex or national origin) who, because of the acquisition of real property used for business or farm operations, moves from real property used for a dwelling, or moves personal property from such other real property. The state relocation services program includes as a minimum such measures, facilities or practices as may be necessary or appropriate to:

- (1) discuss and explain the services available, relocation payments and the eligibility requirements therefor and assist in completing any application or other required forms;
- (2) advise displaced persons that no payments received under The Uniform Relocation Assistance Act (P.L. 91-646) shall be considered as income for the purposes of the Internal Revenue Code of 1954 or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal law.

(d) The amount and extent of the advisory services shall be administered on a reasonable basis commensurate with the displaced person's needs.

*History Note: Statutory Authority G.S. 133-11; 133-14; 133-15;  
136-18(2); 143B-350(f);  
Eff. November 1, 1991.*

### **.0447 ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS**

Relocation assistance will be required on advance and specific parcel acquisitions in the same manner as it will be required on acquisitions for regular projects. Unless the relocation will be on a project-wide basis, the public notice may be postponed.

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*History Note: Statutory Authority G.S. 133-14; 136-18(2); 143B-350(a);  
Eff. November 1, 1991.*

### **.0448 PUBLIC NOTICE OF AVAILABILITY OF SERVICE**

(a) Public notice of the availability of relocation assistance will be given at each public hearing. The person holding the public hearing will advise those present of the availability of relocation assistance, as well as reimbursement of moving costs and supplemental payments for those eligible persons who will be displaced by the project. The Relocation Assistance Brochure will be available for those attending the public hearings.

(b) The relocation agent shall cause to be published in a newspaper(s) of general circulation in the area, a public notice to appear in one or more issues of the paper in the legal ad section of the classified ads. A waiver of this advertisement may be granted by the State Relocation Agent.

*History Note: Statutory Authority G.S. 133-11; 133-14; 136-18(2);  
143B-350(f);  
Eff. November 1, 1991.*

### **.0449 INITIAL CONTACT WITH DISPLACED**

(a) The relocation agent will secure the necessary information from the displaced, explain the relocation program and deliver to the displaced the Relocation Assistance Brochure.

(b) It should be stressed to the owner of any tenant-occupied property that our contact is made with a tenant for securing information only and that no authorization will be given at this time to the tenant to move. All information from the displaced shall be treated as privileged information.

*History Note: Statutory Authority G.S. 133-14; 136-18(2); 143B-350(f);  
Eff. November 1, 1991.*

### **.0450 NOTICE TO FINANCIAL INSTITUTIONS**

When a displaced otherwise qualifies for the replacement housing payments, except that the displaced has not yet purchased or occupied a suitable replacement dwelling, the state, after inspecting the proposed dwelling and finding that it meets the standards set forth for decent, safe, and sanitary dwellings, shall upon the request of the displaced, state to any interest party, financial institution or lending agency, that the displaced will be eligible for the payment of a specific sum provided he purchases and occupies the inspected dwelling within the time limits specified.

*History Note: Statutory Authority G.S. 133-14; 138-18(2); 143B-350(f);  
Eff. November 1, 1991.*

### **.0451 NINETY DAYS WRITTEN NOTICE**

No person lawfully occupying real property shall be required to move from a dwelling, farm, or business location without at least 90 days written notice of the intended vacation date. Exception to the policy will be directed to the State Relocation Agent and only in extreme cases will less than 90 days be approved.

*History Note: Statutory Authority G.S. 133-14; 138-18(2); 143B-350(f);  
Eff. November 1, 1991.*

### **.0452 REVIEW PROCEDURES**

(a) Should any person be dissatisfied with a determination as to their eligibility for a payment or of an amount of payment offered which they believe they should receive, they should request a review by writing to the Manager of Right of Way within 90 days after the date they are eligible to claim the payment. When it becomes known that a person is dissatisfied with a proposed payment, a Form 15.22 will be provided for the purpose of a review. It is necessary for the displaced person to give sufficient reasoning and documents to support their request for a review.

(b) Upon request for a review of any determination to the Manager the State Relocation Agent shall transmit the determination made to the Manager the basis for the determination and all supporting documents, affidavits or information considered. The Manager of Right of Way shall review the determination made by the relocation agent and shall consider any additional documents or data which the dislocated person cares to submit. The manager, upon request, will give the person or their agent

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a full opportunity to present any arguments either oral or in writing, in support of their contentions. The Manager of Right of Way shall, upon reviewing the determination and considering additional data which may be presented, either affirm or modify in writing to the person the determination of the relocation agent and set forth the basis for the action, including an explanation concerning any amount claimed, if any, which has been disallowed.

(c) Should the person be dissatisfied with the ruling of the Manager of Right of Way, they may within 30 days after receiving the letter from the Manager of Right of Way request a review by writing to the State Highway Administrator. Also, it is necessary for the displacee to give the Administrator reasoning and documents to support this second review.

(d) Upon request, the State Highway Administrator shall review the determination and the action taken by the Manager of Right of Way and, upon application of the person or the agent, will hear arguments in support of the contentions of the displaced person. The State Highway Administrator, after reviewing the matter and the contentions of the person, may modify the determination of the Manager of Right of Way or affirm it. The decision of the State Highway Administrator will be final and forwarded promptly in writing to the displacee along with the reasons and explanations for the decision.

*History Note: Statutory Authority G.S. 133-14; 133-146; 143B-350(f);  
Eff. November 1, 1991.*

### **.0453 SEVERED IMPROVEMENTS**

Where only a portion of an improvement will fall within the right of way, the moving cost for the removal of the personality within the right of way will be compensated, as well as the cost necessary to rearrange the personality in the part of the improvement remaining outside of the right of way. The situation would occur most often where business or commercial properties are involved.

*History Note: Statutory Authority G.S. 133-14; 143B-350(a);  
Eff. November 1, 1991.*

### **.0454 REQUEST FOR PROPERTY INSPECTION**

(a) It is necessary that all displaced persons expecting to receive the replacement housing or rental supplement payment must occupy a housing unit which meets the decent, safe, and sanitary housing requirements.

(b) It should be impressed upon the displaced person that they should not fail to request the inspection of the property they proposed to occupy; otherwise, they will forfeit their right to a supplemental payment should it not meet the decent, safe, and sanitary requirements or cannot be rehabilitated to meet the requirements.

*History Note: Statutory Authority G.S. 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0455 AGENCY RESPONSIBILITY**

The agency will assume no responsibility or liability for structural, mechanical, legal, or other unforeseen problems that are discovered after the inspection has been conducted.

*History Note: Statutory Authority G.S. 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0456 MOVING PAYMENTS - RESIDENTIAL**

(a) Any displaced owner occupant or tenant of a dwelling who qualifies as a displaced person is entitled to reimbursement of his or her actual moving and related expenses as the Department determine to be reasonable and necessary. The displacee may move by a commercial mover based on the lower of two estimates obtained by the Department or the displacee may self-move based on actual expense incurred up to the lower commercial estimate. The displacee must maintain adequate records for reimbursement.

Eligible expenses include:

- (1) transportation of displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the State determines that relocation beyond 50 miles is justified;
- (2) packing, crating, and unpacking and uncrating of the personal property;

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- (3) disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property;
  - (4) storage of personal property not to exceed 12 months unless the Department determines that a longer period is necessary; cost of storage on real property already owned or leased by the displaced person is ineligible for reimbursement.
  - (5) insurance for the replacement value of the property in connection with the move and necessary storage;
  - (6) the replacement value of property lost, stolen or damaged in the process of moving (not through the fault or the negligence of the displaced person, his agent or employees) where insurance covering such loss, theft or damage is not reasonably available;
  - (7) where the acquisition of real property used for an eligible business or farm causes a person to vacate a dwelling or other real property not acquired or move his personal property from other real property not acquired, the additional expenses of moving such personality are eligible for appropriate moving payments.
  - (8) the Department will generally not participate in more than one move of a displaced person; however, where it is known to be in the public interest, the State Relocation Agent may give prior approval to more than one move.
  - (9) the Department may participate in a payment for relocating personal property of a displacee that is moved onto remaining or other lands owned by the displaced person or his landlord;
  - (10) other moving related expenses that are not listed as ineligible as the Department determines to be reasonable and necessary.
- (b) Any person displaced from a dwelling or seasonal residence is entitled to receive a fixed payment rather than a payment for actual moving and related expenses except that a person occupying a furnished one-room unit shared by more than one other person, or a person whose residential move is performed by the Department at no cost to the person, shall be limited to fifty dollars (\$50.00).

### **UNFURNISHED UNITS**

I Room -	\$ 250.00
2 Rooms -	350.00
3 Rooms -	450.00
4 Rooms -	550.00
5 Rooms -	625.00
6 Rooms -	700.00
7 Rooms -	775.00
8 Rooms -	850.00
Each Additional Room -	\$ 75.00

### **FURNISHED UNITS**

1st Room -	\$ 200.00
Each Additional Room -	\$ 25.00

The preceding schedules exclude unfurnished or unused rooms, halls, baths, attics, porches, garages, dressing rooms, and utility rooms. However, should a displacee have sufficient storage in carports, garages, enclosed porches, attics, sheds, or utility rooms, the Relocation Agent may count one additional room for these areas. Discretion should be used when counting combination rooms-living/dining, kitchen/dining, etc. If, in the opinion of the Relocation Agent enough personality is in these combination rooms, then two rooms may be counted provided that there is a minimum of 200 square feet. Otherwise, only one room may be counted provided that there is a minimum of 200 square feet. Otherwise, only one room may be counted. Basements having 200 square feet and not partitioned will count as one room if utilized as living or storage area. For each additional 200 square feet, another room may be counted.

**Note:** By using this Fixed Rate method, the displaced person may move by any means available and no further documentation is required.

*History Note: Statutory Authority G.S. 133.8; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0457 MOVING PAYMENT - BUSINESSES, FARMS, NON-PROFIT ORGANIZATIONS**

(a) Moving costs will be paid based on the lower of two estimates obtained by the Department. Should estimates or bids be difficult to obtain, an estimate not to exceed four thousand dollars (\$4,000)

may be made by a Relocation Agent and approved by the Area Relocation Agent or the Raleigh Office. The estimate should be based on the estimated actual costs the displacee will incur and not on the amount a commercial moving firm would charge to make the move. The use of commercial and other costs are not prohibited in making an estimate. The rates paid common labor in the area can be compared with the rates paid by moving companies in arriving at a fair and reasonable amount to be paid by the displacee to someone who will assist with their move. Also, rental rates for trucks or a reasonable allowance for vehicles owned or borrowed by the displacee and used in the move may be considered. Some additional time may need to be allowed due to the inexperience of the displacee in making the move. The amount of any moving expense estimate paid to the displacee must be supported by evidence of actual expenses incurred. Also, the estimated commercial cost of the move should set the upper limit for the moving cost estimate.

(b) Eligible cost in the business or farm operation which qualifies as a displaced person is entitled to payment for such actual moving and related expenses as the Department determines to be reasonable and necessary, including expenses for:

- (1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Department determines that the relocation beyond 50 miles is justified.
  - (2) Packing, crating, unpacking, and uncrating of the personal property.
  - (3) Disconnecting, dismantling, removing, reassembling, reinstalling relocating machinery, equipment and other personal property and substitute personal property. This includes connection to utilities available nearby. It also includes modification to the personal property to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.)
  - (4) Storage of personal property not to exceed 12 months, unless the Department determines that a longer period is necessary. Cost of storage on real property already owned or leased by the displaced person is ineligible for reimbursement.
  - (5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.
  - (6) Any licenses, permits, or certifications required of the displaced person at the replacement location, however, the payment will be based on the remaining useful life of the existing licenses, permits, or certifications.
  - (7) The replacement value of property lost, stolen or damaged in the process of moving, (not through the fault or the negligence of the displaced person or his or her agent or employees) where insurance coverage covering such loss, theft, or damage is not reasonably available.
  - (8) Professional services necessary for planning the move of the personnel property, moving the personal property, and installing the relocated personal property at the replacement location.
  - (9) Reentering signs and replacing stationery on hand at the time of the displacement that is made obsolete as a result of the move.
- (c) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
- (1) fair market value of the item for continued use at the displacement site less any proceeds of the sale. (To be eligible for payment the claimant must make a good faith effort to sell the personal property, unless the Department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the costs of goods to the business not to the potential selling price); or
  - (2) the estimated costs of moving the item but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance less than 50 miles);
  - (3) for advertising signs the amount of a payment shall be the lesser of:
    - (A) The depreciated reproduction cost of the sign as determined by the Department less the proceeds from its sale,
    - (B) Estimated cost of moving the sign but with no allowance for storage.
- (d) The reasonable cost incurred in an attempt to sell an item that is not to be relocated.
- (e) Where only a portion of an improvement will fall within the right of way, the moving cost for the removal of the personality within the right of way will be compensated, as well as the cost necessary to rearrange the personality in the part of the improvement remaining outside of the right of way. This situation would occur most often where business or commercial properties are involved.

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(f) Purchase of substitute personal property. If an item of personal property which is used as part of the business or farm operation is not moved but is properly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- (1) the cost of substitute item including installation costs at the replacement site minus any proceeds from the sale or trade in of the replacement item; or
- (2) the estimated cost of moving and reinstalling the replaced item based on the lowest acceptable bid or estimate obtained by the Department for eligible moving and related expense but with no allowance for storage.

(g) Search for a replacement location. The displaced business or farm operation is entitled to reimbursement for actual expenses not to exceed one thousand dollars (\$1,000.00) as the Department determines to be reasonable which are incurred in searching for a replacement location including:

- (1) transportation;
- (2) meals and lodging away from home;
- (3) time spent searching based on reasonable salary or earnings;
- (4) fees paid to real estate agency or brokers to locate a replacement site excluding any fees or commissions related to the purchase of such site.

(h) Other moving - related expenses that are not listed as ineligible as the Department determines to be reasonable and necessary.

(i) Should estimates or bids be difficult to obtain, an estimate not exceed four thousand dollars (\$4,000.00) may be made by a Relocation Agent and approved by the Area Relocation Agent or the Raleigh Office.

(j) If the displacee elects a self-move, the moving cost payment will be authorized on the lower of two estimates obtained by the Department or an estimate not to exceed four thousand dollars (\$4,000.00) prepared by a Relocation Agent and approved by the Area Agent.

(k) Any displaced business is eligible for a fixed payment, in lieu of a payment for actual reasonable and related expenses and actual reasonable re-establishment expenses. This payment, except for payment to a non-profit organization, would be equal to its average annual net earnings, but not less than one thousand dollars (\$1,000.00) nor more than twenty thousand dollars (\$20,000.00) if the Department determines that:

- (1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Department demonstrates that it will not suffer a substantial loss of its existing patronage; and
- (2) The business is not part of a commercial enterprise having more than three other entities, which are not being acquired by the Department, and, which are under the same ownership and engaged in the same or similar business activities. (For purposes of these procedures a remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered "another establishment."); and
- (3) The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, the Department may waive this test for good cause.
- (4) The business owns or rents personal property which must be moved due to displacement and for which an expense would be incurred, and business vacates or relocates from its displacement site.
- (5) The business is not operated at a displacement dwelling or site solely for the purpose of renting such dwelling or site to others.

(l) In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- (1) The same premises and equipment are shared;
  - (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
  - (3) The entities are held out to the public, and to those customarily dealing with them, as one business;
  - (4) The same person, or closely related persons own, control, or manage the affairs of the entities.
- (m) Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses and actual reasonable moving and related expenses and actual reasonable re-establishment expenses, in an amount equal to its average annual net earnings, but not less than one

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thousand dollars (\$1,000.00) nor more than twenty thousand dollars (\$20,000.00). In the case of a partial acquisition, the fixed payment shall be made only if the Department determines that:

- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
  - (2) The partial acquisition caused a substantial change in the nature of the farm operation.
- (n) Any displaced nonprofit organization may choose a fixed payment of one thousand dollars (\$1,000.00) to twenty thousand dollars (\$20,000.00) in lieu of the payments for actual moving and related expenses and actual reasonable re-establishment expenses if the Department determines that:
- (1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Department demonstrates otherwise; and
  - (2) Any payment in excess of one thousand dollars (\$1,000.00) must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years' annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fun raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.
- (o) The average annual net earnings of a business or farm operation are one half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site prior to displacement projected to an annual rate. If these two taxable years are not representative for the business because the proposed construction has cause an outflow of residents and a reduction in net income, it is possible to use other consecutive tax years if prior approval is received from the Raleigh Office. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Department proof of net earnings through income tax returns, certified financial statements or other reasonable evidence which the Department determine is satisfactory.
- (p) The determination for this payment will be made by the Area Relocation Agent from information furnished by the Project Relocation Agent. Adequate information should be compiled and submitted to reach a definite decision for each business, farm or nonprofit organization. Should there be any questions regarding the qualification of any business, farm or nonprofit organization, the matter should be discussed with Raleigh Office. Tax returns should be submitted to Raleigh for verification prior to submission of the claim for payment.
- (q) In addition to payments available Under Rule .0457 [(a) through (j)] of this Section, a small business, farm, or nonprofit organization may be eligible to receive a payment, not to exceed ten thousand dollars (\$10,000.00) for expenses actually incurred in relocating and re-establishing such small business, farm, or nonprofit organization at a replacement site.
- (1) Re-establishment expenses must be reasonable and necessary, as determined by the Department. They may include, but are not limited to, the following:
    - (A) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
    - (B) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
    - (C) Construction and installation costs, not to exceed one thousand five hundred dollars (\$1,500.00) for exterior signing to advertise the business.
    - (D) Provision of utilities from right of way to improvements on the replacement site.
    - (E) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
    - (F) Licenses, fees and permits when not paid as part of moving expenses.
    - (G) Feasibility surveys, soil testing and marketing studies.
    - (H) Advertisement of replacement location, not to exceed one thousand five hundred dollars (\$1,500.00).
    - (I) Professional services in connection with the purchase or lease of a replacement site.

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- (J) Estimated increased costs of operation during the first two years at the replacement site, not to exceed five thousand dollars (\$5,000.00) for such items as:
- (i) lease or rental charges;
  - (ii) personal or real property taxes;
  - (iii) insurance premiums; and
  - (iv) utility charges excluding impact fees.
- (K) Impact fees or one-time assessments for anticipated heavy utility usage.
- (L) Other items that the Department considers essential to the re-establishment of the business.
- (M) Expenses in excess of the regulatory maximums set forth in Paragraphs (I), (C), (H) and (J) of this Section may be considered eligible if large and of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the State, be waived by the Federal agency funding the program or project, but in no event shall total cost payable under this Section exceed the ten thousand dollars (\$10,000.00) maximum.
- (2) The following is a non-exclusive listing of re-establishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
- (A) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
  - (B) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
  - (C) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in Subparagraph (1)(E) of this Rule.
  - (D) Interest on money borrowed to make the move or purchase the replacement property.
  - (E) Payment to a part-time business in the home which does not contribute materially to the household income.
- (r) A displaced person is not entitled to payment for:
- (1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
  - (2) Interest on a loan to cover moving expenses; or
  - (3) Loss of goodwill; or
  - (4) Loss of profits; or
  - (5) Loss of trained employees; or
  - (6) Any additional operating expenses of a business, farm, or nonprofit organization incurred because of operating in a new location, except as provided in Paragraph (b) (3) and (1)(A) through (M) of this Rule; or
  - (7) Personal injury; or
  - (8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department; or
  - (9) Expenses for searching for a replacement dwelling; or
  - (10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization, except as provided in Paragraph (b)(3) and (1)(A) through (M) of this Rule; or
  - (11) Costs for storage of personal property on real property already owned or leased by the displaced person.

*History Note: Statutory Authority G.S. 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0458 ADVERTISING SIGNS**

- (a) The owner of a displaced advertising sign is eligible to receive a payment for actual reasonable moving and related expenses in moving their advertising sign, in payment for actual direct losses of tangible personal property and in searching for a replacement sign site.
- (b) An advertising sign that is otherwise eligible for moving payments will not be eligible when it is moved to or from a site in violation of state, federal, or local regulations.
- (c) The provisions of this Rule do not apply separately to an advertising sign owned by and located on business or farm being displaced:
- (1) The owner of a displaced sign may be reimbursed for actual, reasonable moving expenses.
  - (2) The owner of a sign may be reimbursed for actual direct losses when entitled to relocate the sign but does not do so. The amount of such loss will be lesser of the depreciated reproduction cost of the sign as determined by the Department of Transportation or the estimated cost of the sign.

- (3) The owner of a displaced advertising sign may be reimbursed for actual reasonable expenses in searching for a replacement sign site not to exceed one thousand dollars (\$1,000.00). Such expenses may include transportation expenses, meals, lodging away from home, and the reasonable value of time actually spent in search, including the fees of real estate agents or brokers. All expenses claimed except value of time actually spent in search, must be supported by bills. Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person conducting the search. A certified statement of the time spent in search and hourly wage rates shall accompany the payment request.

*History Note: Statutory Authority G.S. 133-8; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

**.0459 REPLACEMENT HOUSING PAYMENTS**

(a) The replacement housing payment is the amount, if any, which when added to the amount for which the Department acquired the dwelling, equals the cost which the owner is required to pay for a decent, safe, and sanitary dwelling or the amount determined by the Department as necessary to purchase a comparable dwelling, whichever is less.

(b) It is the Department's responsibility to make available as a comparable replacement dwelling unit and relocate the displaced person to his original ownership status if this is his or her desire. If the alternate tenancy is desired by the displacee, the Department will be expected to make a reasonable effort to accomplish the request. If the optional housing is available, the rent supplement, if any, will be based on the specific option.

(c) When a single family dwelling is owned by several persons, and occupied by only some of the owners, the replacement housing payment will be the difference between the total acquisition costs of the acquired dwelling and the amount determined by the Department as necessary to purchase a comparable dwelling. The Department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Department would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Department may provide additional purchase assistance or rental assistance.

(d) If the owner-occupant displacees do not purchase, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary dwelling in accordance with the rent supplement program.

(e) An owner occupant owning only a partial interest must reinvest his share of the acquisition costs plus the computed supplemental payment in order to receive the maximum payment.

(f) The upper limit of a replacement housing payment shall be based on the cost of a representative comparable replacement dwelling.

- (1) If available, at least three representative comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling to the extent justified by local market data.
- (2) If the site of the comparable replacement dwelling lacks a major exterior attribute at the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.
- (3) If an uneconomic remnant remains after a partial taking and the owner of the remaining property agrees to sell the remainder to the Department, the fair market value of the remainder will be added to the acquisition cost of the displacement dwelling for purposes of computing the payment.
- (4) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling, and the remainder is a buildable lot as stated in the approved appraisal, the Department will offer to purchase the entire property and the fair market value of the remainder will be added to the acquisition cost for purposes of computing the replacement housing payment.
- (5) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.
- (6) If other housing is available in a rural area (that is comparable, except that is not decent, safe and sanitary), the supplementary payment may be determined by estimating the cost to correct

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the decent, safe and sanitary deficiencies, adding this amount to the selling price of the replacement housing which is not decent, safe and sanitary and comparing this amount with the amount paid the displacee for his dwelling together with an area of land typical in size for a homesite in the general area. The owner of the non-decent, safe and sanitary house must agree to correct the deficiencies and quote the sales price with the deficiencies corrected.

- (7) If replacement housing is available, the payment may be determined by estimating the amount paid for the dwelling at the present location, together with an area of land typical in size for a homesite in the general area and deducting this amount from the amount of a private contractor's firm bid of the replacement cost of a functionally similar decent, safe and sanitary dwelling - on a comparable homesite.

(g) If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition costs when computing the price differential.

(h) Market rent should be used when determining a Rental Replacement Housing Payment:

- (1) For an owner-occupant, use the fair market rent for the displacement dwelling.  
(2) For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or circumstances.

(i) If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for the area less the acquisition price ("before" value) of the acquired dwelling and the portion of the tract on which it is located. If the Department has offered to buy the entire property as a buildable lot, then the total value of the tract may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(j) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling and the tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling, plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area.

(k) Where the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling, and the acquisition price of that portion of the acquired land which represents a tract typical for residential use in the area. If the dwelling is written off or given no value for residential purposes in the approved appraisal, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the entire acquisition price of the parcel.

(l) If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants move together to a comparable replacement dwelling. However, if the Department determines that two or more occupants maintain separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(m) For the purpose of purchase and occupancy, the displaced person "purchases" a dwelling when he:

- (1) Purchases a dwelling; or  
(2) Purchases and rehabilitates a substandard dwelling; (When the replacement dwelling selected by the displacee has decent, safe and sanitary deficiencies, the cost to correct deficiencies is eligible to the extent that the purchase price, cost of the replacement dwelling, and the cost of correcting the deficiencies do not exceed the maximum replacement housing payment based on comparable replacement properties); or  
(3) Relocates a dwelling which he or she owns or purchases; or  
(4) Constructs a dwelling on a site he or she owns or purchases; or  
(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases;  
(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(n) In addition to the tenure of occupancy provisions, a displaced person is eligible for appropriate payments when he or she relocates and occupies a decent, safe, and sanitary dwelling within a one-year

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period (unless extended by the Department for good cause) beginning on the later of the following dates:

- (1) The date on which the owner received from the Department final payment for all costs of the displacement dwelling in negotiated settlements; or in the case of condemnation, the date on which the Department deposits the required amount in court, or
- (2) The date the Department has made available to the displacee at least one comparable replacement dwelling, or
- (3) The date on which the displaced person moves from the displacement dwelling. For tenants occupants this is the only pertinent date.
- (4) No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reasons beyond his or her control, including:
  - (A) A disaster, an emergency, or an imminent threat to the public health or welfare as determined by the Department.
  - (B) A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his reasonable control, such as delay in construction, military reserve duty, or hospital stay, cannot occupy the replacement dwelling within the time period as shown in this Rule shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payment under these conditions would be deferred until actual occupancy was accomplished.
  - (C) A displaced tenant or owner "occupies" a replacement dwelling within the meaning of this Section only if the dwelling is his permanent place of residence, and he satisfied the eligibility requirements as set forth.
- (o) Before making payment to the displaced person or releasing a payment from escrow, the Department must have inspected the replacement dwelling and determined that it meets the standards for decent, safe and sanitary housing. The Department may also utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection. Such determination by the Department that a dwelling meets the standards for decent, safe and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under this Section and is not representation for any other purpose. The Department will assume no responsibility or liability for structural, mechanical, legal, or other unforeseen problems that are discovered after the inspection has been conducted. If it is not possible under the circumstances for the Department to make the necessary inspection or to secure the needed inspection through a competent third party, a certification from the displacee that he has occupied decent, safe and sanitary housing will be sufficient to establish the displacee's eligibility for payment.
- (p) Application for Replacement Housing or Rent Supplement payments shall be in writing on a form provided by the Department. The application shall be filed within 18 months of displacement or in the case of owner-occupant, displacement date or date of final payment, whichever is later. The Department may waive this time period for good cause. The Replacement Housing Payment may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor for rent or the seller for use toward the purchase of decent, safe and sanitary dwelling. In cases where an applicant otherwise qualifies for replacement and requests the Department to do so, such payments shall be paid into escrow prior to the displacee's moving.
- (q) No property owner will be deprived of the earliest possible payment of the replacement housing amounts to which he is rightly due. An advanced replacement housing payment can be computed and paid to a property owner if the determination of the Department's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by using the Department's written offer for the property as the acquisition price. Payments of such amount may be made upon the owner-occupant's agreement that upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the Department as necessary to acquire a comparable, decent, safe and sanitary dwelling. Any agreement prepared must be agreed to and signed by both the owner and his attorney. If the amount awarded in the condemnation proceeding as the fair market value of the property acquired, plus the amount of the recomputed replacement housing payment exceeds the price paid for, or the Department's determined cost of a comparable dwelling, the owner will refund to the Department from the court award, an amount equal to the amount of the excess. In no event, shall he be required to refund more than the amount of the replacement housing payment advanced. If the

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property owner does not agree to such adjustment, the replacement housing shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

(r) The displacee should contact and secure from the Relocation Agent his written approval that the house proposed for purchase or renting meets decent, safe and sanitary standards.

(s) Any person who has obtained legal ownership of a replacement dwelling or land upon which his replacement dwelling is constructed or moved, either before or after displacement, and occupies the replacement dwelling after being displaced but within the applicable time limit, is eligible for a replacement housing payment if the replacement dwelling meets DSS requirements. The current fair market value of the previously owned property (land and improvements) will be used to determine if a replacement housing payment is justified. This will apply to remaining land as well.

(t) If the owner retains ownership of his or her dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(1) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.

(2) The cost of making the unit a decent, safe and sanitary replacement dwelling.

(3) The current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is reasonable opportunity for the claimant to rent a suitable replacement site.

(4) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(u) A displaced person who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a payment if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(v) A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(w) When comparable housing within the originally offered replacement housing amount is no longer available, the Department will determine a new replacement housing amount based on available housing which equal to or better than the subject and meets the other comparable criteria. The recomputed replacement housing payment can be lower than the original only if the displaced person has not committed to a dwelling based on the original replacement housing payment. In certain instances where the Department has been furnished erroneous information by a displacee, it will be permissible to recompute a replacement housing payment offer which was based on the confirmed price of a replacement dwelling that "exceeds" the comparability requirement. For example, if the Department learns that the need for additional space, room or special requirement has been eliminated before the displacement occurs, then a new payment should be computed to conform to comparability provided that the displacee has not actually committed himself in the purchase of a replacement dwelling to the extent that he should suffer financial loss if he does not complete the transaction. If he has so committed himself, the original replacement housing payment will not be revised. This policy will apply to both the long and short term owners and tenants.

(x) Where administrative increases are made over and above the approved appraisal, it will be necessary to prorate the increase on claims involving farm acreages, acreage tracts or misplaced improvements on other lands where the value must be extracted. When a Negotiating Agent settles a claim of this nature for an amount in excess of the approved appraisal, he should advise the owner at the time of negotiating the settlement that the replacement housing payment will be reduced on a prorated basis for the amount of the administrative adjustment which is applicable to the replacement housing payment. The Agent should calculate the deduction and advise the owner of the amount of the replacement housing payment he will receive if he qualifies or get in touch with the Relocation Agent to compute any change in the replacement housing payment.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14;*

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*143B-350(f);  
Eff. November 1, 1991.*

### **.0460 REPLACEMENT HOUSING PAYMENTS FOR 180 DAY OWNER-OCCUPANT**

- (a) A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:
- (1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and
  - (2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Department may extend such one-year period for good cause).
    - (A) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or
    - (B) The date at least one comparable replacement dwelling is made available.
- (b) The total replacement housing payment for an eligible 180-day homeowner-occupant is an amount not to exceed twenty-two thousand five hundred dollars (\$22,500.00), which is the combined sum of:
- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Paragraph (c) of this Rule; and
  - (2) The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Paragraph (d) of this Rule; and
  - (3) The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with Paragraph (e), of this Rule.
- (c) The price differential is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:
- (1) The reasonable cost of a comparable replacement dwelling; or
  - (2) The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.
- (d) Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other dept service costs, if not paid as incidental costs, and shall be based on bonafide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.
- (1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
  - (2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
  - (3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
  - (4) Purchaser's points and origination fees, but not seller's points, shall be paid to the extent:
    - (A) They are not paid as incidental expenses,
    - (B) They do not exceed rates normal to similar real estate transactions in the area, and
    - (C) The Department determines them to be necessary,
  - (D) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this Rule.
  - (5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

- (e) The incidental expenses to be paid are those reasonable and necessary costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer including:
- (1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
  - (2) Lender, FHA or VA Application and Appraisal Fees.
  - (3) Loan origination or assumption fees that do not represent prepaid interest based on the unpaid mortgage balance on the displacement dwelling less the buydown amount.
  - (4) Certification of structural soundness and termite inspection when required.
  - (5) Credit report.
  - (6) Owner's and mortgagees' evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
  - (7) Escrow agent's fee.
  - (8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
  - (9) Such other costs as the Raleigh Office determines to be incidental to the purchase.
  - (10) If there is no mortgage financing on the displacement dwelling, closing costs related to new mortgage financing is not reimbursable.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

**.0461 PAYMENT TO OWNER-OCCUPANTS OF 180 DAYS WHO RENT**

A 180-day owner eligible for a replacement housing payment who elects to rent a replacement dwelling is eligible for a payment not to exceed five thousand two hundred and fifty dollars (\$2,250.00). The payment shall be computed and disbursed in accordance with Rule .0462(b) of this Section.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

**.0462 PAYMENT TO OWNER OR OCCUPANT - 90 DAYS**

(a) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed five thousand two hundred fifty dollars (\$5,250.00) for rental assistance, as computed in accordance with Paragraph (c) of this Rule, if such displaced person:

- (1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
- (2) Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within one year after:
  - (A) In the case of a tenant, the date he or she moves from the displacement dwelling, or
  - (B) In the case of an owner-occupant, the later of:
    - (i) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited in the court; or
    - (ii) The date he or she moves from the displacement dwelling.

(b) An eligible displaced person who rents a displacement dwelling is entitled to a payment up to, but not to exceed five thousand two hundred fifty dollars (\$5,250.00) for rental assistance. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- (1) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
- (2) The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

(c) The base monthly rental for the displacement dwelling is the lesser of:

- (1) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Department. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances.), or
- (2) Thirty percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established

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solely on the criteria in Paragraph (e) (1) of this Rule. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise, or

- (3) The total of the amounts designated for shelter and utilities is receiving a welfare assistance payment from a program that designates the amount for shelter and utilities.

(d) The payment under this Rule shall be disbursed in a lump-sum amount, unless the Department determines on a case-by-case basis, for good cause, that the payment should be made in installments or the displaced person requests periodic payments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(e) An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive if the person rented a comparable replacement dwelling. A down payment assistance payment may be increased to any amount not to exceed five thousand two hundred and fifty dollars (\$5,250.00) including incidental costs if the rental assistance payment is less than five thousand two hundred and fifty dollars (\$5,250.00). When the rental assistance payment exceeds five thousand two hundred and fifty dollars (\$5,250.00), the down payment assistance payment will be based on the amount required to obtain conventional financing for the purchase of a decent, safe and sanitary replacement dwelling as determined by the Department but not to exceed the amount of the rental assistance payment. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive if he or she met the 180 day occupancy requirement. A displaced person eligible to receive a replacement housing payment as a 180-day homeowner-occupant is not eligible for this payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

(f) It is necessary that tenants be informed that should they choose public housing, the payment will be computed based on what they pay for rent at the public housing unit.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0463 PAYMENT TO TENANT OR OWNER - LESS THAN 90 DAYS**

(a) This Rule applies to tenants who have occupied a dwelling for less than 90 days prior to the initiation of negotiations or who began to occupy it after the initiation of negotiations and who are in occupancy at the time the Department obtains legal possession of the property (closing date or date of filing in a condemnation proceeding).

- (1) All provisions of previous rules may apply to these occupants (i.e., moving payments, relocation assistance, 90-day notice) including rental assistance payment if comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months. This payment will be paid under last resort housing.
- (2) If the less than 90-day tenant is eligible for a payment and purchases a decent, safe and sanitary dwelling, the down payment will be the lesser of the computed rent supplement or the required down payment on the property purchased. This payment will be paid under last resort housing.
- (b) There is no provision for a replacement housing payment to owners of less than 90 days. They are eligible for moving costs only.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0464 MOBILE HOMES**

(a) A tenant or owner-occupant deplaned from a mobile home, or mobile homesite, is entitled to a payment for the cost of moving his or her personal property on an actual cost basis or, as an alternative, on the basis of a fixed payment as described in the applicable Department schedule.

- (1) If a displaced mobile home owner (including a non-occupant owner) files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges are reimbursable.

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- (2) If the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described in Paragraph (c)(3) of this Rule the owner is not eligible for moving personal property from the mobile home.
- (3) If a mobile home requires repairs or modifications to enable it to be moved to a replacement site, and the Department determines that it is practical to do so, payment shall be limited to the reasonable costs of moving the mobile home and making such repairs or modifications.
- (b) Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses unless the Department determines that comparable mobile home parks are available which do not require entrance fees.
- (c) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment not to exceed twenty-two thousand five hundred dollars (\$22,500.00) if:
- (1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;
  - (2) The person meets the other basic eligibility requirements; and
  - (3) The Department acquires the mobile home as real property, or the mobile home is not acquired by the Department but the owner is displaced because the Department determines that the mobile home:
    - (A) Is not decent, safe and sanitary; or
    - (B) Cannot be moved without substantial damage or unreasonable cost; or
    - (C) Cannot be moved because there is no available comparable replacement site; or
    - (D) Cannot be moved because it does not meet mobile home park entrance requirements.
    - (E) If the mobile home is not actually acquired, and the Department determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling is used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.
- (d) A displaced person or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed five thousand two hundred fifty dollars (\$5,250.00), if:
- (1) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
  - (2) The person meets the other basic eligibility requirements of Rule .0462 (a) of this Section; and
  - (3) The Department acquired the mobile home as real property, or the mobile home is not acquired by the Department but the owner or tenant is displaced from the mobile home because of one of the circumstances described in Rule .0464 (3) of this Section.
- (e) A displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable Section in Rule .0460 (b), (d), (e), Rule .0461 (a), and Rule .0462 (b), (c). However, the total replacement housing payment to a person shall not exceed the maximum payment [either twenty-two thousand five hundred dollars (\$22,500.00) or five thousand two hundred fifty dollars (\$5,250.00)] permitted under the Rule that governs the computation of the replacement housing payment or rental assistance payment.
- (f) When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site. This applies whether the displaced person's actual replacement dwelling is another mobile home or a conventional home.
- (g) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis on the reasonable cost of a comparable conventional dwelling.
- (h) If the Department determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Department may determine that for purposes of computing the price differential, the cost of a comparable replacement dwelling is the sum of:
- (1) The value of the mobile home;
  - (2) The cost of any necessary repairs or modifications;
  - (3) The estimated cost of moving the mobile home to a replacement site.
- (i) If a mobile home is not actually acquired, but the occupant is considered displaced under these Regulations, the "initiation of negotiations" shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he or she is a displaced person for the purposes of these Regulations.

(j) If the owner is reimbursed for the cost of moving the mobile home under these Regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(k) The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Department determines that a mobile home occupant located in the remaining part of the property is required to move, such an occupant shall be considered displaced by the project and entitled to the relocation payments and other assistance in these Regulations.

*History Note: Statutory Authority G.S. 133-9; 133-10; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

**.0465 HOUSING OF LAST RESORT**

(a) Whenever a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limit of twenty-two thousand five hundred dollars (\$22,500.00) for owners and five thousand two hundred fifty dollars (\$5,250.00) for tenants, the Department shall provide additional or alternate assistance under the provisions of replacement housing of last resort. Any decision to provide last resort housing assistance must be adequately justified either:

- (1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
  - (A) The availability of comparable housing in the project area.
  - (B) The resources available to provide comparable housing.
  - (C) The individual circumstances of the displaced person.
- (2) By a determination that:
  - (A) There is little, if any, comparable replacement housing available to displaced persons within the project area and, therefore, justification for last resort housing assistance may be necessary for the project.
  - (B) The project cannot be advanced to completion in a timely manner without last resort housing assistance.
  - (C) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(b) The Raleigh Office will approve all requests for last resort housing. A written report concerning the details for special situations will be forwarded to the Raleigh Office in order that a decision can be reached and the situation be resolved.

(c) No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under Section .0400 of this Subchapter or replacement housing of last resort. The Department shall not require any displaced person to accept a dwelling provided by the Department under these procedures (unless the Department and displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(d) The Department has broad latitude in implementing housing of last resort, but implementation shall be for reasonable cost, on a case-by-case basis unless and exception to case-by-case analysis is justified for an entire project. The methods of providing housing of last resort include, but are not limited to:

- (1) A replacement housing payment in excess of the twenty-five thousand dollars (\$25,000.00) and five thousand two hundred fifty dollars (\$5,250.00) limits. (A rental assistance subsidy may be provided in monthly installments or in a lump sum at the Department's discretion.)
- (2) Rehabilitation of and or additions to an existing replacement dwelling.
- (3) The construction of a new replacement dwelling.
- (4) The provision of a direct loan, which requires regular amortization or deferred payment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
- (5) The relocation, and, if necessary, rehabilitation of a dwelling.
- (6) The purchase of land and or a replacement dwelling by the Department and subsequent sale or lease to, or exchange with, a displaced person.
- (7) The removal of barriers to the handicapped.

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- (8) The change in status of the displaced person from tenant to homeowner when it is more cost-effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.
- (9) Under special circumstances consistent with the definition of a comparable replacement dwelling, modified methods of providing housing of last resort permit consideration of:
  - (A) Replacement housing based on space and physical characteristics different from those in the displacement dwelling.
  - (B) Upgraded, but smaller, replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent as described in Rule .0441 (b)(2) of this Section.
  - (C) The Department may use replacement housing of higher density in computing the replacement housing payment if comparable single-family housing is not available. Also, a mobile home may be used for a single-family residence where comparable conventional dwellings are not available.
- (10) The Department shall provide assistance under housing of last resort to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

*History Note: Statutory Authority G.S. 133-10.1; 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **.0466 DISPLACEMENTS CAUSED BY DISASTERS OR EMERGENCIES**

- (a) Should a major disaster or an emergency condition cause a person who is located on an active right of way project to move before the project would require the move, the Federal Highway Administration may grant a waiver of the policy on making housing available. The waiver may be given where it is demonstrated that a person must move because of:
  - (1) A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or
  - (2) A Presidentially-declared national emergency; or
  - (3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.
- (b) Whenever a person is required to relocate for a temporary period because of an emergency as described in Paragraph (a)(1), (2), and (3) of this Rule, the Department shall:
  - (1) Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe, and sanitary dwelling.
  - (2) Pay actual reasonable out-of-pocket moving expenses and any reasonable increased in monthly housing costs incurred in connection with the temporary relocation.
  - (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)
- (c) To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (e.g. fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

*History Note: Statutory Authority G.S. 133-14; 143B-350(f);  
Eff. November 1, 1991.*

### **SECTION .0500 - UTILITY ENCROACHMENTS**

#### **.0503 APPLICATION FOR UTILITY ENCROACHMENTS**

- (a) The applicant for a utility encroachment agreement shall prepare four copies of the standard encroachment agreement on forms which are available from Division and District Engineers Offices or from the State Utility Agent, Highway Building, Raleigh, N. C.
- (b) The application shall include, or by reference incorporate:
  - (1) The state standards for accommodating utilities;
  - (2) A general description of the size, type, nature and extent of the proposed utilities;
  - (3) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway, the traveled way, the rights-of-way lines, and where applicable, the control of access lines and approved access points. Where facilities of another utility are to be unearthed, or exposed to potential damage, drawings shall show as nearly as possible the location of said facilities;
  - (4) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements;
  - (5) The action to be taken in case of noncompliance with state requirements; and,
  - (6) Other provisions as deemed necessary.
- (c) Plans showing details of structure attachments shall be furnished the Head of Structure Design for approval before the encroachment agreement is submitted.

*History Note: Statutory Authority G.S. 136-18(5); 136-18(10); 136-93;  
Eff. April 3, 1981;  
Amended Eff. November 1, 1991.*

#### **.0515 RELOCATION OF UTILITIES ENCOUNTERED IN HIGHWAY IMPROVEMENTS**

- (a) The Department of Transportation shall assume the financial responsibility for non-betterment costs of adjusting or relocating utilities when the conflicting utilities are occupying a valid utility right of way. A valid utility right of way for the purpose of this policy is one in which the Municipality or other utility owner has a compensable interest. The Department of Transportation, upon the request of the Municipality or other utility owner, may provide the engineering and include the utility adjustment or relocation in the highway improvement contract at no cost to the Municipality or other utility owner.
- (b) The Department of Transportation shall assume the financial responsibility for the non-betterment cost of adjusting or relocating those municipally-owned utilities necessitated by highway construction when said utilities are located on a non-system right of way provided that:
  - (1) the highway construction does not constitute an improvement to the non-system street in which the utilities are located, and
  - (2) the non-system street in which the utilities are located is not incorporated into or obliterated by the highway project. The mere crossing of a project by a street either at-grade or by separation shall not constitute "incorporation" into the project.
- (c) The Municipality or other utility owner is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located within the existing right of way of a State system highway, except as provided for in G.S. 136-27.1 as follows: The Department of Transportation shall pay the non-betterment cost for the relocation of water and sewer lines, located within the existing State highway right of way, that are necessary to be relocated for a State highway improvement project that are owned by:
  - (1) a Municipality with a population of 5,500 or less according to the latest decennial census;
  - (2) a nonprofit water or sewer association or corporation; or
  - (3) any water or sewer system organized pursuant to Chapter 162-A of the General Statutes.
- (d) The owner of the utility is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located on a non-valid utility easement.
- (e) The Department of Transportation may enter into agreements with Municipalities or other utility owners to provide that the necessary engineering and utility construction be accomplished by the Department on a reimbursement basis as follows:
  - (1) Reimbursement to the Department will be due after completion of the work and within 60 days after date of invoice.
  - (2) Interest shall be paid at the rate of eight percent on any unpaid balance due.
- (f) Should a Municipality fail to pay the Department of Transportation in accordance with the provisions of the Utility Agreement, the Department may apply up to ten percent of each year's allocation of the Municipality's share of funds allocated under the provisions of G.S. 136-41.1 (Powell Bill) until the Municipality's obligation is paid.

(g) In those cases where no agreement can be reached, or in cases where the utility owner refuses to relocate or refuses to claim ownership, the Board shall issue an order on the authority of G.S. 136-18(10) requiring the necessary adjustments. Upon failure of the utility to comply with the order, all utility construction shall be included in the highway improvement contract. Upon completion of the work, the owner of the utility shall be invoiced for the work performed. If the invoice is not paid, the Board of Transportation shall refer the matter to the Office of the Attorney General for further action.

*History Note: Statutory Authority G.S. 136-18(10); 136-27.1; 136-93;  
Eff. November 1, 1991.*

## **SUBCHAPTER 2C - SECONDARY ROADS SECTION**

### **SECTION .0100 - SECONDARY ROADS**

#### **.0105 PROPERTY OWNER PARTICIPATION PAVING**

(a) Subdivision-Residential Roads. Those roads which are eligible to be paved on a participating plan will be administered according to the following procedure:

- (1) The property owners or their representative will contact the division engineer or his representative to determine whether or not the road in question is eligible for paving on a participating basis.
  - (2) If the division engineer or his representative determines that the road in question is eligible to be paved on a participating basis, he will so inform the property owners or their representative. He will then make a survey to determine the length of the road in question and will submit to the property owners or their representative a letter stating the cost, at a rate of four dollars (\$4.00) per linear foot, each side, to the property owners for the road to be paved and the approximate date when the work can be completed.
  - (3) The property owners must then present to the division engineer or his representative a certified check made payable to the Department of Transportation, Division of Highways for the entire amount as stated in Paragraph (2) of this Rule. Once this has been accomplished, work will proceed as soon as forces and supplemental funds are available.
- (b) Rural Roads.
- (1) The Board of Transportation will allow the paving of a rural road on a property owners' participation basis identical in cost of four dollars (\$4.00) per foot along each side as required for unpaved subdivision/residential roads. This is on a first-come, first-served basis. A section of rural unpaved road to be paved under this policy will be at least 0.30 of a mile in length provided the road is more than 0.30 of a mile in length. The section to be paved can be at the beginning, middle, or end of an unpaved road and need not connect to existing pavement.
  - (2) The Board of Transportation Member reserves the right to determine whether or not the amount of funds needed to supplement the property owners' amount is justified based upon the paving priority, the total cost of the road as compared to the amount of funds received by the county, and the potential future development that would improve the established paving priority.
  - (3) If the four dollars (\$4.00) per foot required along each side of the road does not generate enough funds from the property owners to justify supplementing the state funds needed, the Board of Transportation Member, after consultation with the division and district engineers, may then negotiate and recommend to the Board of Transportation a per-foot cost to the property owners which will better justify the supplementing of state funds to pave the road.

*History Note: Statutory Authority G.S. 136-44.1, 136-44.2; 136-44.7;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; July 1, 1984; October 1, 1982.*

#### **.0110 IMPROVEMENTS FOR INDUSTRIAL MANUFACTURING PROJECTS**

(a) The Board of Transportation will review requests for access road improvements to industrial or manufacturing projects as a part of the statewide effort to attract new industry to North Carolina. Projects eligible for assistance from the Department of Transportation may be any industrial or manufacturing factory, mill, assembly or fabricating, or industrial research development or laboratory facility, or industrial processing facility, or expansion of existing such facilities. The Board of Transportation will individually review the economic impact of the location of distribution facilities for

distributing manufactured goods. The number of employees and truck traffic will be primary justification for assistance with road improvements. Approval of such requests will be based primarily upon the initial number of employees as compared to the road improvement cost. The initial investment in the project and the precedent of past approvals by the Board of Transportation for similar projects will be considered. The particular county involved will be considered as to current economic development.

(b) In the case of Paragraph (a) of this Rule, the access road improvements will be along an alignment determined by the Department of Transportation, and the right-of-way will be dedicated at no cost to the Department of Transportation. Such access road improvements will terminate at the property line of the project. The road improvements involved must become a part of the state maintained system as required by North Carolina General Statutes.

(c) The Board of Transportation will consider the addition of an access road constructed by others to the state maintenance system provided it is justifiable based upon the existing Access and Public Service Road Policy. The construction standards for such a road will be determined by the Division Engineer based upon the intended use of the roadway.

*History Note: Statutory Authority G.S. 136-44.1; 143B-350(f); 143B-350(g);*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; July 1, 1984.*

**.0112 STATEMENT OF POLICY**

(a) General Eligibility of Roads

- (1) The Board of Transportation recognizes that all roads with the required number of occupied homes should be eligible for consideration for addition to the State Maintenance System without cost to the property owners.
- (2) The Board of Transportation will consider, for addition to the State System, any road with a right of way recorded or construction started prior to October 1, 1975, for state maintenance without the property owners bearing any cost.
- (3) The eligibility for consideration of such roads will be that the roads serve the required number of occupied homes and the cost for addition to the State Maintenance System will be reasonable when compared to the number of occupied homes served. In the case of subdivision roads, the property abutting the roads must be basically fully developed.

(b) Unpaved Subdivision Roads

- (1) The Board of Transportation will consider unpaved subdivision roads constructed before October 1, 1975, for addition to the State Maintenance System provided the roads serve the required number of occupied homes and the roads are built to the minimum unpaved construction standards of the Department of Transportation.
- (2) The roads will be subject to property owners' participation for paving once they become a part of the State Maintenance System.
- (3) This policy will allow the requirement that a subdivision road be paved to minimum Department of Transportation standards to coincide with the North Carolina General Statute, 136-102.6, enacted October 1, 1975. This law requires that public roads recorded from October 1, 1975, must be built to the minimum construction standards of the Department of Transportation. The minimum construction standards include the requirement that a subdivision road be paved.

(c) Addition of Cul-de-sacs. The Board of Transportation currently requires that cul-de-sacs of 0.20 mile or less serve at least four occupied homes before qualifying for addition to the State Maintained System. The Board of Transportation recognizes that many cul-de-sacs have been denied state maintenance in the past due to driveway locations or less than four lots being located around the cul-de-sacs. Therefore, the Board of Transportation will consider the addition of cul-de-sacs constructed, recorded, or with preliminary county planning board approval before October 1, 1975, which serve less than four occupied homes to the State Maintained System provided:

- (1) The cul-de-sac is fully developed.
- (2) At least two occupied homes are served.
- (3) At least two individual property owners are involved.

*History Note: Statutory Authority G.S. 136-44.1, 136-44.10;*

*136-102.6; 143B-350(f); 143B-350(g); 153A-205;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; October 1, 1982.*

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### **.0114 SCHOOL BUS DRIVES AND SCHOOL BUS PARKING AREAS**

The Department of Transportation is authorized to construct and maintain school bus drives and school bus parking areas at public schools. It is the policy of the Board of Transportation to pave a school bus drive and stabilize a school bus parking area at public schools with expenditures being limited to fifty thousand dollars (\$50,000) per school site.

*History Note: Statutory Authority G.S. 136-18(17);  
Eff. November 1, 1991.*

### **.0115 RURAL VOLUNTEER FIRE AND RESCUE SQUAD FACILITIES**

It is the present policy of the Board of Transportation to finance the construction of entrance driveways to the vehicle bays of rural volunteer firehouses approved by the North Carolina Fire Insurance Rating Bureau and the vehicle bays at rural rescue squad facilities approved by the North Carolina State Association of Rescue Squads, Inc. It is also the policy of the Board of Transportation to provide maintenance improvements to those areas previously constructed by the Department of Transportation. The justification is based upon requested inspection from the facility to the district or division engineer involved. The cost of the maintenance improvement will be reasonable in nature and will be subject to availability of funds from the Secondary Road Fund allocation to the counties. It is the intention of this policy revision to maintain what has been previously provided to the facility or what will be provided to a new facility in the future.

*History Note: Statutory Authority G.S. 136-18(24);  
Eff. November 1, 1991.*

## **SUBCHAPTER 2D - HIGHWAY OPERATIONS**

### **SECTION .0400 - FIELD OPERATIONS - MAINTENANCE AND EQUIPMENT**

#### **.0401 HIGHWAY MAINTENANCE CONTRACT RETREATMENT PROGRAM**

*History Note: Statutory Authority G.S. 136-44.3; 136-44.1;  
143B-350(f); 143B-350(g);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

#### **.0407 HIGHWAY AND STREET PLANTING IN MUNICIPALITIES**

*History Note: Statutory Authority G.S. 136-66.1;  
143B-346; 143B-350(f); 143B-350(g);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

#### **.0410 RENTAL OF SUPPLEMENTAL EQUIPMENT**

The Department of Transportation, consistant with its needs and the availability of state-owned equipment, may supplement its own equipment requirements by the rental of privately owned. Operator may also be furnished with equipment.

*History Note: Statutory Authority G.S. 143B-346; 143B-350(f); 143B-350(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

#### **.0414 LOCATION OF GARBAGE COLLECTION CONTAINERS**

Permits for the placement of garbage collection containers may be issued only under the following circumstances:

- (1) No garbage collection container site shall be located on any State highway rights-of-way except by written authorization of the Department of Transportation signed by the State Highway Administrator.
- (2) No garbage collection container shall be located within 500 feet of an occupied dwelling unless the applicant obtains written permission from the owner of the dwelling.

- (3) An application for a site permit may be obtained from and shall be submitted to the District Engineer for the county in which the garbage container is proposed to be located.
- (4) Guidelines for container sites are as follows:
- (a) The county or municipality requesting the permit shall be responsible for any work to be performed in preparation of the site. Any work performed on the site by the Department of Transportation will be on a reimbursable basis in accordance with rules 19A NCAC 2E.0501 and 19A NCAC 2E.0502.
  - (b) Container sites adjacent to paved roadways shall be constructed to standards as required by the District Engineer.
  - (c) Container sites adjacent to unpaved roads shall be prepared with materials similar to those existing on the traveled portion of the roadway.
- (5) When container sites are located in areas requiring drainage, proper drainage shall be provided as directed by the District Engineer or his representative.
- (6) Whenever container sites are located adjacent to the roadway, minimum adequate sight distances shall be provided for the vehicle entering the road from the container site.
- (7) Container sites shall be permitted adjacent to roadways only when safe lateral clearances can be provided from the edge of pavement to the container. The District Engineer shall determine the safe lateral clearances to be provided at each site.
- (8) The county or municipality which holds a permit for the placement of garbage collection containers as provided herein shall maintain an adequate collection schedule in order to prevent spillage or overflow from said containers and shall keep the site free from all garbage and trash other than that which is within the garbage collection containers which are authorized by the permit. The District Engineers shall give written notice to the county or municipality of any failure to comply with this requirement. If a county or municipality which is so notified does not bring the site within compliance of the requirement within 30 days of receipt of the written notice, the District Engineer shall then revoke the permit and dispose of the garbage collection containers accordingly.

**Note:** A booklet describing the guidelines used by the Department of Transportation in granting permits is available from the Office of the District Engineer or the Manager, Design Branch, Division of Highways, Raleigh, N. C. 27611 free of charge.

*History Note: Legislative Objection [(a)] Lodged Eff. August 19, 1980;  
Legislative Objection [(a)] Removed Eff. April 23, 1981;  
Statutory Authority G.S. 136-18.3; 136-18(10);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; April 3, 1981; April 11, 1980.*

#### **.0416 BRIDGE BETWEEN MOREHEAD CITY AND ATLANTIC BEACH**

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. August 10, 1981;  
Repealed Eff. November 1, 1991.*

#### **.0417 BRIDGE ON US 17 OVER NEUSE RIVER AT NEW BERN**

- (a) The draw shall open on signal except that the draw may remain closed:
  - (1) from Monday through Friday from 6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m. for pleasure vessels; however, the draw shall open at 7:30 a.m. and 5:00 p.m. for any vessel waiting to pass; and
  - (2) Sundays and Federal holidays from May 24 through September 8 from 2:00 p.m. to 7:00 p.m. for pleasure vessels except that the draw shall open at 4:00 p.m. and 6:00 p.m. for any vessels waiting to pass.
- (b) The draw shall always open on signal for public vessels of the United States, State, or local vessels used for public safety, tugs with tows and vessels in distress.

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; August 10, 1981.*

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### **.0425 FEDERAL DISASTER ASSISTANCE**

The Manager of the Maintenance and Equipment Branch is subdelegated the duty and authority by the State Highway Administrator to execute applications, assurances and agreements and other documents on behalf of the Department of Transportation necessary to receive Federal Disaster Assistance from the Federal Emergency Management Agency.

*History Note: Statutory Authority G.S. 136-18; 136-4; 143B-350;  
Eff. October 1, 1991.*

### **.0426 BRIDGE ON US 70 OVER BEAUFORT CHANNEL AT BEAUFORT**

The draw shall open on signal, except that from 7:30 a.m. to 7:30 p.m. the draw shall open for pleasure craft on signal every hour on the half hour from May 1 to October 31.

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. November 1, 1991.*

### **.0427 BRIDGE ON NC 50 OVER INTERCOASTAL WATERWAY AT SURF CITY**

The draw shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled only on the hour.

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. November 1, 1991.*

### **.0428 BRIDGE/US 74/76 OVER/INTERCOASTAL WATERWAY/WRIGHTSVILLE BEACH**

The draw shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled only on the hour.

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. November 1, 1991.*

### **.0429 BRIDGE SR 1172 OVER INTERCOASTAL WATERWAY AT SUNSET BEACH**

The draw shall open on signal, except that from 7:00 a.m. to 7:00 p.m. the draw shall open for pleasure craft if signaled on the hour from April 1 to October 31.

*History Note: Statutory Authority G.S. 136-18(5);  
Eff. November 1, 1991.*

## **SECTION .0500 - FERRY OPERATIONS**

### **.0501 GENERAL**

The rules and regulations named herein apply only for the transportation of individual passengers and their hand baggage as defined in Rule .0504 of this Subchapter; vehicles under their own power and vehicles not under their own power but under tow of a vehicle under its own power, and bicycles.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0503 CARRIER**

When the term "carrier" is used in these rules and regulations, it refers to the North Carolina Department of Transportation; the Division of Highways; and the Ferry Division.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0509 RESPONSIBILITY OF VESSEL MASTER**

When in the master's opinion safe landing cannot be made upon arrival of the vessel at a designated port of destination, it may be landed at another port at which safe landing can be made.

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*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0519 RIGHT TO REFUSE TRANSPORT: CARGO**

Carrier reserves the right to refuse any and all articles loaded in or on vehicles or vehicles which in its opinion will jeopardize the safe operation of the vessel, or which carrier is not equipped to handle. Carrier also reserves the right to refuse to transport vehicles containing offensive or ill-smelling cargo and liquid or semi-liquid commodities when not in tightly enclosed containers or tanks, precluding possibility of escaping odors or leakage from such vehicles. Dangerous articles prohibited by law will not be transported including those hazardous cargos regulated by the U.S. Coast Guard.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0520 BRAKES**

Drivers of all vehicles should set emergency brakes and engage parking gear on all vehicles having same before leaving the vehicles. Drivers of all mechanically powered vehicles shall shut off engines, after being directed to their designated parking areas.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0524 DOGS, AND OTHER HOUSEHOLD PETS AND WILD ANIMALS**

Dogs and household pets may accompany passengers and will be carried on vessels subject to the following conditions:

- (1) Dogs, cats, kittens, and small pet birds will be transported without charge when accompanied by passengers on foot or in vehicles. Such animals will be transported entirely at risk of owner who will be required to take care of and safe-guard them while on vessels or at terminals.
- (2) Such animals must be held secure by leash, crate, cage, or otherwise adequately restrained, as the case may require.
- (3) Such animals shall not be permitted in passenger accommodations, but only on ear deck under short leash and in custody of responsible person. Carrier, however, reserves the right to require that they be carried in certain places as designated by the master, whenever, in his judgement, such a course is necessary for the safety and convenience of the passengers.
- (4) Wild animals must, at all times, be securely crated or caged so as to preclude contact by passengers.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0525 NO LIABILITY ASSUMED BY CARRIER**

No liability will be assumed by the carrier in the transportation of household pets, or wild animals.

*History Note: Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0532 TOLL OPERATIONS**

The Cedar Island-Ocracoke, Swan Quarter-Ocracoke and Southport-Ft. Fisher ferry operations are toll operations. Fares and rates applicable to each operation are as listed in this Rule:

- |   |         |
|---|---------|
| (1) Cedar Island-Ocracoke and Swan Quarter-Ocracoke     |         |
| (a) pedestrian  | \$ 1.00 |
| (b) bicycle and rider                                   | \$ 2.00 |
| (c) single vehicle or combination 20' or less in length | \$10.00 |

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(minimum fare for licensed vehicle)		
(d) vehicle or combination from 20' up to and including 40'		\$20.00
(e) vehicle or combination up to 65' (maximum length)		\$30.00
(2) Southport-Ft. Fisher		
(a) pedestrian		\$ 0.50
(b) bicycle and rider		\$ 1.00
(c) single vehicle or combination 20' or less in length (minimum fare for licensed vehicle)		\$ 3.00
(d) vehicle or combination from 20' up to and including 65' (maximum length)		\$ 6.00

*History Note:* Statutory Authority G.S. 136-82; 136-84; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; May 1, 1983.

### **.0538 VEHICLE WEIGHT LIMITATIONS**

Maximum weights permissible for each ferry vessel is as follows:

Gross Load Limit	
Any Axle	13,000 lbs.
2 Axles (Single Vehicle)	24,000 lbs.
3 or More Axles (Single or Combination Vehicles)	36,000 lbs.

*History Note:* Statutory Authority G.S. 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.

### **.0539 VEHICLE PHYSICAL DIMENSION LIMITATIONS**

(a) Maximum physical dimensions for vehicles on each ferry vessel are as follows:

Vessel	Length	Width	Height
Lindsay Warren	65'	144"	13'6"
Conrad Wirth	65'	144"	13'6"
Roanoke	65'	144"	13'6"
R. B. Etheridge	65'	144"	13'6"
A. W. Drinkwater	65'	144"	13'6"
H. C. Bonner	65'	144"	13'6"
Silver Lake	65'	120"	13'6"
Pamlico	65'	120"	13'6"
Sea Level	65'	96"	13'6"
Gov. Edward Hyde	65'	96"	13'6"
	50' (Side)	120"	13'6"
Beaufort	50'	96"	12'4"
Sandy Graham	55'	96"	13'6"
Gov. Cherry	55'	96"	13'6"
Emmett Winslow	50'	96"	13'6"
Ocracoke	65'	144"	13'6"
Cape Point	65'	144"	13'6"
Chicamacomico	65'	144"	13'6"
Kinnakeet	65'	144"	13'6"
Frisco	65'	144"	13'6"
Governor Russell	65'	144"	13'6"
Governor James			
Baxter Hunt, Jr.	65'	144"	13'6"
Carteret	55'	120"	13'6"

(b) All vehicles having overall dimensions in excess of established size restrictions (Length: single two axle vehicle, 35 feet; single three axle vehicle, 40 feet; vehicle combination, 60 feet Width: 96 inches

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Height: 13 feet 6 inches) shall carry a special permit issued by the division of highways; otherwise, loading aboard a ferry vessel will not be permitted.

*History Note: Statutory Authority G.S. 20-119; 136-82; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **SECTION .0600 - TECHNICAL SERVICES**

#### **.0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT**

(a) The authority to issue permits for movement of vehicle(s) with or without load is delegated to the State Highway Administrator. The Administrator has further delegated this authority to the Head of the Maintenance Unit, and under limited conditions, to division and district engineers. Division and district offices shall not issue permits for travel outside their respective area without approval of other involved divisions or districts or the Central Permit Office. The State Highway Administrator may alter, delete or add to these regulations upon his determination that the best interest of the Division of Highways or the traveling public will be served.

Irrespective of the route shown on the permit, an alternate route will be followed:

- (1) if directed by a peace officer;
- (2) if directed by an official traffic control device to follow a route to a weighing device;
- (3) if the specified route on which the permittee is traveling is officially detoured, the driver shall contact the issuing permit office prior to proceeding;

(b) Application for permits shall be made on forms approved by the Head of Maintenance Unit or by telephone, wire service or written request. Application for permits requiring an engineering study or other special conditions or considerations will be approved by the Head of Maintenance Unit and must be submitted at least ten working days prior to the anticipated date of move. A surety bond may be required for permits issued in excess of 122,000 lbs. gross vehicle weight to be determined by the Head of Maintenance in conjunction with the division engineer.

(c) Permits may be declared void by the State Highway Administrator, Head of Maintenance Unit or the Central Permit Office upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Policy or restrictions stated on the permit.

(d) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

*History Note: Statutory Authority G.S. 20-118(f); 20-119; 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991.*

#### **.0602 PERMITS-ISSUANCE AND FEES**

(a) Permits may be issued or movements of loads which cannot be reasonably divided, dismantled or disassembled, or so loaded to meet legal requirements. Permits are issued on authorized forms with appropriate designation for qualifying moves. To be valid, a permit must be signed by the permittee and carried in the towing unit while permitted load is in transit. A permit issued by the Department is not valid for travel over municipal streets (Defined as streets or highways not maintained by the State of North Carolina). Permitted vehicles will not travel in convoy.

- (1) Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within the validation of such permit. No single trip permit request will be issued for a time period to exceed 30 days.
- (2) Annual permits (blanket) are valid 12 months from the date of issuance. They may be issued for:
  - (A) Permitted loads up to 10' wide authorizing travel on all roads;
  - (B) Up to but not to exceed a width of a 12' authorizing travel on North Carolina, Interstate and US highways. Provided, mobile modular homes not to exceed a width of a 14' unit with an allowable roof overhang not to exceed 12" may also be authorized to travel on designated North Carolina, Interstate and US highways.
- (3) City Passenger Buses which exceed the weight limits in GS 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.

(b) A fee will be collected as specified in GS 20-119(b). Only cash, certified check, money order or company check will be accepted. No personal checks will be accepted. Permittees with established credit accounts will be billed monthly for permits issued for the previous month.

All fees collected are to be processed in accordance with DOT Field Policy Procedure Manual, Chapter 6, Section 22. Provided, the following exemptions of fees shall apply to permits issued:

- (1) For house moves;
- (2) For movement of farm equipment by the farmer for agricultural purposes;
- (3) To any agency of the United States Government;
- (4) The State of North Carolina or its agencies, institutions, or municipalities, provided the vehicle/vehicle combination is registered in the name of such government body.

*History Note: Statutory Authority G.S. 20-119; 136-18(5);*

*Eff. July 1, 1978;*

*Amended Eff. October 1, 1991; April 1, 1984; April 11, 1980.*

**.0603 ISSUING OFFICES AND PROCEDURES**

**.0604 APPLICATIONS FOR A PERMIT**

**.0605 PERMITS**

**.0606 LEGAL WEIGHTS AND DIMENSIONS**

*History Note: Statutory Authority G.S. 20-116; 20-118; 20-119; 136-18(5);*

*Eff. July 1, 1978;*

*Amended Eff. October 1, 1990; September 1, 1990;*

*April 1, 1984; April 11, 1980;*

*Repealed Eff. October 1, 1991.*

**.0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS**

(a) Width is limited to 15' for all movements except certain construction machinery, buildings, structures, manufacturing machinery for moves authorized by the Central Permit Office. If blades of bulldozers, graders or front end loader buckets cannot be angled to extend no more than 12' across the roadway, they must be removed. A blade or bucket or other attachment which has been removed for safety reasons, or if in the best interests to the Department has been removed, may be moved with the equipment without being considered a divisible load. Moves exceeding 12' for a commodity essential to national health, safety or defense may be permitted upon receipt of proof of necessity submitted by the agency directly concerned, however, if considered to be detrimental or unsafe to the other traveling public or if the highway cannot accommodate the move due to width or weight, such move will be denied. Loads must be so placed on vehicle/vehicle combination so as to present least over dimension to traffic.

(b) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. A surety bond may be required to cover the cost of damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for vehicle or vehicle combinations not to include off highway construction equipment without an engineering study is:

Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.
3 axle vehicle	60,000 lbs.
4 axle vehicle	75,000 lbs.
5 axle vehicle	94,500 lbs.
6 axle vehicle	103,000 lbs.
7 or more axle vehicle	122,000 lbs.

- (2) The maximum permit weight allowed for off highway construction equipment is:

- (A) Self-propelled scrapers with low pressure tires:

Single axle	37,000 lbs.
2 axle vehicle	55,000 lbs.
3 axle vehicle	70,000 lbs.
4 axle vehicle	90,000 lbs.

- (B) Self-propelled truck cranes with counterweights and boom removed (if practical):

3 axles - not to exceed 25,000 lbs. per axle maximum gross

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weight	70,000 lbs.
4 axles - not to exceed 25,000 lbs. per axle maximum gross weight	78,000 lbs.
5 axles - wheel base less than 244 inches:	
front 2 axles	35,000 lbs.
rear 3 axles	56,500 lbs.
Gross	91,500 lbs.
5 axles - wheel base more than 244 inches:	
front 2 axles	37,500 lbs.
rear 3 axles	57,000 lbs.
Gross	94,500 lbs.
6 axles - wheel base more than 296 inches:	
2 axle tandem	50,000 lbs.
3 axle group	57,000 lbs.
Gross	103,000 lbs.
* 7 axles - extreme wheel base of 44 feet:	
2 axle tandem	40,000 lbs.
3 axle group	57,000 lbs.
4 axle group	71,000 lbs.
Gross	122,000 lbs.

\*Seven axle equipment subject to individual review for approval. Speed restricted to 45 m.p.h.

(3) Sealed Ship Containers:

- (A) Going to or from a designated seaport (to include in state and our of state) and has been or will be transported by marine shipment;
- (B) Licensed for maximum allowable weight allowed in G.S. 20-118;
- (C) Vehicle vehicle combination has at least five axles;
- (D) To have proper documentation (shippers bill of laden and or trucking bill of laden) of sealed commodity being transported available for enforcement inspection.

The Department of Transportation shall issue a permit for 80,000 lbs. but not to exceed 94,500 lbs. with up to ten designated routes of premitted travel provided all qualifying requirements have been met.

(c) Overlength permits will be limited as follows:

- (f) Single trip permits are limited to 85' to include towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 85' after review of route of travel. Provided, mobile modular homes may be issued permits not to exceed 95'.
- (2) Annual (blanket) permits will not be issued for lengths to exceed 65'. Front overhang may not exceed 3' unless if transported otherwise would create a safety hazard. Provided, mobile modular home permits may be issued for a length not to exceed 91'.
- (d) There are not set limits for permitted height as it is controlled by clearances on designated route. Permit will indicate "Check Height on Structures". The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances should be checked by the permittee prior to movement underneath.
- (e) Time of move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday or approved state holidays. Continuous travel would be authorized for any vehicle vehicle combination up to but not to exceed 94,500 lbs., provided:
  - (1) no other over legal dimension is to be included in the permitted move, and
  - (2) the vehicle is licensed for the maximum allowable weight determined by extreme axle measurements. If the holiday falls on Sunday, the following Monday will be considered the holidays. Time restrictions may be determined by the issuing office if in the best interest for safety and/or to expedite traffic. Provided, mobile modular homes are restricted to travel Monday through 12 noon on Saturday.
- (f) The speed of permitted moves shall be that which reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. The driver will maintain a speed consistent with maintaining proper interval and temporarily relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. Provided, seven axle self-propelled truck cranes with extreme wheel base of 44 feet shall not exceed a maximum speed of 45 mph.
- (g) Additional safety measures will be required as follows:

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- (1) A yellow (or a color of equal effectiveness) banner measuring 7' x 18" bearing the legend "Oversize Load" in 10" black letters will be displayed on the towing unit for all loads in excess of 10' wide;
  - (2) Red flags measuring 18" square will be displayed on all sides at the widest point of load for all loads in excess of 10' wide but the flags shall be so mounted as to not increase the overall width of the load;
  - (3) A flagman may be required for vehicle/vehicle combinations of loads in excess of 12' in width when a speed of 20 miles per hour cannot be maintained on level terrain.
  - (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
  - (5) Flashing amber lights will be used as determined by the issuing permit office.
- (h) The object to be transported will not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit.
- (i) No move will be made when weather conditions render visibility less than 500' for a person or vehicle. Moves will not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular 14' unit with an allowable roof overhang not to exceed 12" will be prohibited when wind velocities exceed 25 miles per hour in gusts.
- (j) All obstructions, including traffic signals, signs, utility lines will be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the district engineer having jurisdiction over the area involved.
- (k) Requirement for escort vehicles(s) will be determined by the issuing office and/or the Central Permit Office.

*History Note:* Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;  
*Eff.* July 1, 1978;  
*Amended Eff.* October 1, 1991; October 1, 1990; September 1, 1990; January 1, 1985.

### **.0608 LENGTH**

### **.0609 HEIGHT**

### **.0610 WEIGHT**

### **.0611 TIME LIMIT**

*History Note:* Statutory Authority G.S. 20-116; 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;  
*Eff.* July 1, 1978;  
*Amended Eff.* September 1, 1990; October 1, 1987; April 1, 1984; February 1, 1983; April 11, 1980; November 1, 1978;  
*Repealed Eff.* October 1, 1991.

### **.0612 PERMITS - HOUSE MOVES**

- (a) Application for a permit will be made by a licensed housemover for moves in excess of 15' to the appropriate district or division office in which the house is to be moved or in conjunction with other districts or divisions included in the proposed move.
- (b) Provided, an exemption shall not require an individual to acquire a housemover license prior to applying for a permit if the building is owned by the permittee and such move is to or from property owned individually by the permittee.
- (c) Conditions and limitation on building move permits will be determined by the division or district engineers and/or the Central Permit Office. The permittee assumes all responsibility for injury to persons or damage to property of any kind. See 19A NCAC 2D .0618.

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(d) State Highway Patrol or other Law Enforcement personnel having jurisdiction will be notified of the anticipated date and time of move for "House" widths exceeding 15'.

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Session Laws Ch. 720, s.3(1977);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; April 1, 1984; January 1, 1979.*

- .0613 TIME AND SAFETY REQUIREMENTS - BUILDING MOVES**
- .0614 SIZE AND WEIGHT - BUILDING MOVES**
- .0615 ESTIMATE OF GROSS WEIGHT - BUILDINGS**

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. April 11, 1980;  
Repealed Eff. October 1, 1991.*

- .0617 REMOVAL OF OBSTRUCTIONS - BUILDING MOVES**

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. April 11, 1980;  
Repealed Eff. October 1, 1991.*

- .0619 LIMITATIONS - BUILDING MOVES**
- .0620 REQUIRING OF ESCORT VEHICLE**
- .0621 POSITION OF ESCORT VEHICLES**
- .0622 ESCORT OF VEHICLE REQUIREMENTS**
- .0623 SLOW SPEED: ESCORT**
- .0624 TIME OF MOVE**
- .0625 SPEED LIMITS**
- .0626 SIGNS: FLAGS**
- .0627 STATE HIGHWAY PATROL NOTIFICATION**

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Board of Transportation Minutes for February 16, 1977  
and November 10, 1978;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1990; September 1, 1990;  
January 1, 1985; July 1, 1981; April 11, 1980;  
January 1, 1979;  
Repealed Eff. October 1, 1991.*

- .0629 TOWING UNIT**
- .0630 ROUTE CHANGES**
- .0631 HIGHWAY RIGHT OF WAY RESTRICTIONS**
- .0632 WEATHER**

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. October 1, 1990; April 11, 1980;  
Repealed Eff. October 1, 1991.*

- .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION**
- (a) A permit may be denied for a period of up to six months upon written finding that the applicant violated, while in possession of a previously issued permit, any of the rules contained in this Section, the Special Permit Manual, or state and local laws and ordinances regulating the operation of overweight or oversized vehicles.

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(b) A permit may be revoked upon written findings that the permittee violated the terms and conditions of the permit, which shall incorporate by reference these Rules, the rules in the Special Permit Manual, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of overweight and/or overdimension vehicle/vehicle combinations or vehicle, vehicle combination and load. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

(c) No permit shall be denied or revoked, or renewal refused, until a written notice of the denial or violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the State Highway Administrator or his designee within 10 days of receipt of written notification of denial or revocation. The State Highway Administrator or his designee must give at least 10 days written notice of the time and place of the hearing to the applicant by personal service or certified mail, return receipt requested. A written decision by the State Highway Administrator or his designee must be within 10 days from the date of the hearing to the applicant. Upon revocation of the permit, it must be surrendered without consideration refund of fees and a new permit obtained prior to movement of the overdimension and/or over weight vehicle upon restoration of permit privileges.

(d) Permits will be invalid if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of permit conditions regarding route, time of movement, licensing, number of axles or any other special condition of the permit. The penalties under G.S. 20-118 and G.S. 20-119 apply in such situations. Provided, when the driver of a permitted vehicle is faced with a bona fide, verifiable emergency requiring that the vehicle be operated temporarily off route or off route due to verifiable and unintentional error of the driver, the permit will not be valid. The owner of the vehicle must either obtain a corrected permit from point of inspection to destination or the vehicles may be escorted back to the permitted route.

*History Note: Statutory Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f); Eff. July 1, 1978; Amended Eff. October 1, 1991; April 1, 1984; April 11, 1980.*

### **.0634 DELEGATION**

### **.0635 COORDINATION OF MOVEMENT**

### **.0636 SPECIAL CONDITIONS**

### **.0637 SPECIAL PERMIT LIMITATIONS**

### **.0638 UNUSUAL CIRCUMSTANCES**

*History Note: Statutory Authority G.S. 20-119; 136-14.1; 136-18(5); Eff. July 1, 1978; Amended Eff. December 1, 1990; April 1, 1984; November 1, 1978; Repealed Eff. October 1, 1991.*

### **.0639 SPECIAL PERMITS FOR PASSENGER BUSES**

*History Note: Statutory Authority G.S. 20-118(8); Eff. September 1, 1978; Repealed Eff. October 1, 1991.*

### **.0641 PERMIT FEES**

*History Note: Statutory Authority G.S. 20-119; 136-18(5); 143B-359(f)(13); 12-3.1; Eff. April 1, 1984; Repealed Eff. October 1, 1991.*

## **SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS**

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### **.0801 PREQUALIFYING TO BID: REQUALIFICATION**

(a) Prospective bidders shall prequalify with the Department. The requirements for prequalification will be furnished each prospective bidder by the Manager of Construction, Division of Highways, Department of Transportation, Raleigh, N. C. 27611 upon receipt of a written request. All required statements and documents shall be filed with the Manager of Construction by the prospective bidder at least two weeks prior to the date of opening of bids. A bid will not be opened unless all prequalification requirements have been met by the bidder and have been found to be acceptable by the Chief Engineer.

(b) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in Chapter 87 of the General Statutes of North Carolina.

(c) All bidders must requalify annually. To requalify, the prospective bidder must submit a completed Experience Questionnaire Form, acceptable to the Manager of Construction, on or before the anniversary date of the original prequalification. Experience Questionnaire Forms will be furnished approximately 30 days prior to the anniversary date and must be completed and executed in the same manner as the original form.

(d) After reviewing the Experience Questionnaire, and the list of available equipment, the Manager of Construction will notify the prospective bidder in writing of the response to his request for prequalification.

(e) The Experience Questionnaire is a form showing the work experience record of the prospective bidder. Copies of this form may be obtained from the Manager of Construction, Division of Highways, Raleigh, N. C. 27611 or the Assistant Secretary for Management at no cost.

*History Note: Statutory Authority G.S. 136-18(1); 136-28.1;  
136-44.1; 136-45; 143-350(f);  
Eff. April 3, 1981;  
Amended Eff. November 1, 1991.*

### **.0803 ADVERTISEMENT AND INVITATIONS FOR BIDS**

(a) All projects in each monthly bid opening will normally be advertised in three widely circulated daily newspapers throughout the state four weeks prior to the bid opening. Projects may be advertised for shorter or longer periods of time as determined by the State Highway Administrator.

(b) An invitation to bid for monthly bid opening will be mailed to those contracting firms, material suppliers and other interested parties who have requested they be placed on the invitation to bid mailing list. This invitation to bid will normally be mailed out on the day the four-week advertisement appears in the newspapers. If projects are later added to the letting, or if a special bid opening is set up and the projects are advertised for a two or three-week period, an invitation to bid on these projects will be mailed to those contracting firms on the mailing list.

*History Note: Statutory Authority G.S. 136-28.1;  
Eff. April 3, 1981;  
Amended Eff. November 1, 1991.*

### **.0808 PREPARATION AND SUBMISSION OF BIDS**

All bids shall be prepared and submitted in accordance with the following listed requirements:

- (1) The proposal form furnished by the department shall be used and shall not be taken apart or altered. The bid shall be submitted on the same proposal form which has been furnished to the bidder by the department as identified by the bidder's name marked on the front cover by the department.
- (2) All entries including signatures shall be written in ink.
- (3) The bidder shall submit a unit or lump-sum price for every item in the proposal form other than items which are authorized alternates to those items for which a bid price has been submitted. As an exception to this Rule, when the proposal form permits a bidder to submit a bid on only a portion of the work covered by the entire proposal form, the bidder shall then submit a unit or lump-sum price for every item constituting that portion of the work on which the bidder has elected to place a bid other than items which are authorized alternates to those items for which a bid price has been submitted. The unit or lump-sum prices bid for the various contract items shall be written in figures. The unit prices shall be rounded off by the bidder to contain no more than four decimal places.

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- (4) An amount bid shall be entered in the proposal form for every item on which a unit price has been submitted. The amount bid for each item other than lump-sum items shall be determined by multiplying each unit bid price by the quantity for that item, and shall be written in figures in the "Amount Bid" column in the proposal form. In the case of lump sum items, the price shall be written in figures in the "Amount Bid" column in the proposal form.
- (5) The total amount bid shall be written in figures in the proper place in the proposal form. The total amount bid shall be determined by adding the amounts bid for each item.
- (6) Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the bidder shall initial the change in ink.
- (7) The bid shall be properly executed. In order to constitute proper execution, the bid shall be executed in strict compliance with the following:
  - (a) If a bid is by an individual, it shall show the name of the individual and shall be signed by the individual with the word "Individually" appearing under the signature. If the individual operates under a firm name, the bid shall be signed in the name of the individual doing business under the firm name.
  - (b) If the bid is by a corporation, it shall be executed in the name of the corporation by the president, vice president, or assistant vice president. It shall be attested by the Secretary or assistant secretary. The seal of the corporation shall be affixed. If the bid is executed on behalf of a corporation in any other manner than as above, a certified copy of the minutes of the board of directors of said corporation authorizing the manner and style of execution and the authority of the person executing shall be attached to the bid or shall be on file with the department.
  - (c) If the bid is made by a partnership, it shall be executed in the name of the partnership by one of the partners.
  - (d) If the bid is a joint venture, it shall be executed by each of the joint venturers in the appropriate manner set out in this Rule. In addition, the execution by the joint venturers shall appear below their names.
  - (e) The bid execution shall be notarized by a notary public whose commission is in effect on the date of execution. Such notarization shall be applicable both to the bid and to the non-collusion affidavit which is part of the signature sheets.
- (8) The bid shall not contain any unauthorized additions, deletions, or conditional bids.
- (9) The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- (10) The bid shall be accompanied by a bid bond on the form furnished by the department or by a bid deposit. The bid bond shall be completely and properly executed in accordance with the requirements of Rule .0809 of this Section. The bid deposit shall be a certified check or cashiers check in accordance with Rule .0809 of this Section.
- (11) The bid shall be placed in a sealed envelope and shall have been delivered to and received by the department prior to the time specified in the invitation to bid.
- (12) The bid shall not be an unbalanced bid.

*History Note: Statutory Authority G.S. 136-18(1);*

*Eff. April 3, 1981;*

*Amended Eff. November 1, 1991; July 1, 1982.*

### **.0809 BID BOND OR BID DEPOSIT**

- (a) Each bid shall be accompanied by a corporate bid bond or a bid deposit of a certified or cashiers check in the amount of at least five percent of the total amount bid for the contract. No bid will be considered or accepted unless accompanied by one of the foregoing securities. The bid bond shall be executed by a corporate surety licensed to do business in North Carolina and the certified check or cashiers check shall be drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation and made payable to the Department of Transportation in an amount of at least five percent of the total amount bid for the contract.
- (b) The condition of the bid bond or bid deposit is: the principal shall not withdraw its bid within 60 days after the opening of the same, and if the Board of Transportation shall award a contract to the principal, the principal shall within 10 days after the notice of award is received by him, give payment and performance bonds with good and sufficient surety as required for the faithful performance of the contract and the protection of all persons supplying labor and materials in the prosecution of the work; in the event of the failure of the principal to give such payment and performance bond such contract and execute such documents as required then the amount of the bid bond shall be immediately paid

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to the Department as liquidated damages or, in the case of a bid deposit, the deposit shall be forfeited to the Department.

(c) Withdrawal of a bid due to a mistake made in the preparation of the bid, where permitted by Rule .0819 of this Section shall not constitute withdrawal of a bid as cause for payment of the bid bond or forfeiture of the bid deposit.

(d) When a bid is secured by a bid bond, the bid bond shall be on the form furnished by the Department. The bid bond shall be executed by both the bidder and a corporate surety licensed under the laws of North Carolina to write such bonds. The execution by the bidder shall be in the same manner as required by Rule .0808 of this Section for the proper execution of the bid. The execution by the corporate surety shall be the same as is provided for by Rule .0808(7)(B) of this Section for the execution of the bid by a corporation. The seal of the corporate surety shall be affixed to the bid bond. The bid bond form furnished is for execution of the corporate surety by a General Agent or Attorney in Fact. A certified copy of the Power of Attorney shall be attached if the bid bond is executed by a General Agent or Attorney in Fact. The Power of Attorney shall contain a certification that the Power of Attorney is still in full force and effect as of the date of the execution of the bid bond by the general agent or Attorney in Fact. If the bid bond is executed by the corporate surety by the President, Vice President, or Assistant Vice President and attested to by the Secretary or Assistant Secretary, then the bid bond form furnished shall be modified for such execution, instead of execution by the Attorney in Fact or the General Agent.

(e) When a bid is secured by a bid deposit (certified check or cashiers check), the execution of a bid bond will not be required.

(f) If the bidder has failed to meet all conditions of the bid bond but the Department has not received the amount due under the bid bond, the Bidder may be disqualified from further bidding as provided in Rule .0816 of this Section.

*History Note: Statutory Authority G.S. 136-18(1);*

*Eff. April 3, 1981;*

*Amended Eff. November 1, 1991.*

### **.0810 DELIVERY OF BIDS**

(a) All bids shall be placed in a sealed envelope having the name and address of the bidder, and the statement "Bid for the Construction of State Highway Project No. \_\_\_\_\_ in \_\_\_\_\_ County (Counties)" on the outside of the envelope.

(b) If delivered in person, the sealed envelopes shall be delivered to the office of the Contract Officer as indicated in the invitation to Bid, except that if it is delivered in person on the day on which bids are to be opened, it shall be delivered to the place indicated in the invitation to bid. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope addressed to the Contract Officer, Division of Highways, North Carolina Department of Transportation, Raleigh, N. C. 27611. The outer envelope shall also bear the statement "Bid for the Construction of State Highway Project No. \_\_\_\_\_."

(c) All bids shall be delivered prior to the time specified in the invitation to bid. All bids received after such time will not be accepted and will be returned to the bidder unopened.

*History Note: Filed as a Temporary Amendment Eff. March 15, 1982,*

*for a Period of 4<sup>7</sup> Days to Expire on May 1, 1982;*

*Statutory Authority G.S. 136-18(1);*

*Eff. April 3, 1981;*

*Amended Eff. November 1, 1991; July 1, 1982; May 1, 1982.*

### **.0811 WITHDRAWAL OR REVISION OF BIDS**

A bidder may, without prejudice to himself, withdraw a bid after it has been delivered to the Department, provided the request for such withdrawal is made either in writing or by telegram to the Chief Engineer-Operations or the engineer presiding over the public opening of bids before the date and time set for the opening of bids. The bidder may then submit a revised bid provided it is received prior to the time set for opening of bids.

Only those persons authorized to sign bids under the provisions of Rule .0808(7) of this Section shall be recognized as being qualified to withdraw a bid.

Withdrawal of a bid after the date and time set for the opening of bids will be permitted only in accordance with Rule .0819 of this Section.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Amended Eff. November 1, 1991.*

**.0813 WITHDRAW OF BIDS - MISTAKE**

- (a) Criteria for Withdrawal of Bid: The Department of Transportation may allow a bidder submitting a bid pursuant to G.S. 136-28.1 for construction or repair work to withdraw his bid after the scheduled time of bid opening upon a determination that:
- (1) a mistake was in fact made in the preparation of the bid;
  - (2) the mistake in the bid is of a clerical or mathematical nature and not one of bad judgment, carelessness in inspecting the work site, or in reading the plans and specifications;
  - (3) the mistake is found to be made in good faith and was not deliberate or by reason of gross negligence;
  - (4) the amount of the error or mistake is equal to or greater than three percent of the total amount bid;
  - (5) the notice of his mistake and request for withdrawal of the bid by reason of the mistake was promptly communicated to the Chief Engineer and in no instance longer than 48 hours after the scheduled time of bid opening. If the Bidder notifies the Chief Engineer verbally, written notice of mistake must be submitted within 48 hours to the Chief Engineer accompanied by copies of bid preparation information.
  - (6) the Department of Transportation will not be prejudiced or damaged except for the loss of the bid.
- (b) Hearing by Chief Engineer: If a bidder files a notice of mistake along with a request to withdraw his bid, the Chief Engineer (or his designee) will promptly hold a hearing thereon. The Chief Engineer will give to the requesting bidder reasonable notice of the time and place of any such hearing. The bidder may appear at the hearing and present the original working papers, documents or materials used in the preparation of the bid sought to be withdrawn, together with other facts and arguments in support of his request to withdraw his bid. The bidder will be required to present a written affidavit that the documents presented are the original, unaltered documents used in the preparation of the bid.
- (c) Action by State Highway Administrator: A determination may be made by the administrator that the bidder meets the criteria for withdrawal of the bid as set forth in Rule .0819 of this Section upon presentation of clear and convincing evidence by the bidder. The Chief Engineer will present his findings to the State Highway Administrator for action on the bidder's request. The Chief Engineer will advise the Bidder of the Administrator's decision prior to the Board of Transportation's consideration of award.
- (d) Bid Bond: If a bid mistake is made and a request to withdraw the bid is made, the bid bond shall continue in full force and effect until there is a determination by the Administrator that the conditions in Rule .0819(a) of this Section have been met. The effect of the refusal of the contractor to give payment and performance bonds within ten days after the notice of award is received by him, if award has been made by the Board of Transportation after consideration and denial of the contractor's request to withdraw his bid, shall be governed by the terms and conditions of the bid bond.

*History Note: Statutory Authority G.S. 136-18(1); 143B-350(f);  
Eff. May 1, 1984;  
Amended Eff. November 1, 1991.*

**.0814 CORRECTION OF BID ERRORS**

- (a) General: The provisions of this Rule shall comply in waiving irregularities and correcting apparent clerical errors and omissions in the "unit bid price" and the "amount bid" for contract bid items.
- (b) Omitted Unit Bid Price - Amount Bid Completed - Quantity Bid on Is One Unit: In the case of a bid item for which the "amount bid" is completed, but the "unit bid price" is omitted and the "quantity" specified shown in the proposal for the bid item is only one unit, the "unit bid price" shall be deemed to be the same as the amount bid for that bid item and shall constitute the "contract unit price" for that bid item.
- (c) Omitted Unit Bid Price - Amount Bid Completed - Quantity Bid on Is More than One Unit: In the case of a bid item for which "the amount bid" is completed (extension of the "unit bid price" by the quantity) but the "unit bid price" is omitted and the quantity shown in the proposal for the bid item is more than one unit, the "unit bid price" shall be deemed to be the amount derived by dividing

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the "amount bid" for that item by the quantity shown in the proposal for that bid item and shall constitute the "contract unit price" for that bid item.

(d) Discrepancy in the "Unit Bid Price" and the "Amount Bid": In the case of a bid item in which there is a discrepancy between the "unit bid price" and the extension for the bid item ("amount bid"), the "unit bid price" shall govern. As an exception to Paragraphs (a), (b), and (c) of this Rule, on bids for contracts not funded with any Federal funds, the extension for the bid item ("amount bid") shall govern when the discrepancy consists of an obvious clerical mistake in the "unit bid price" consisting of the misplacement of a decimal point. The correction to the "unit bid price" will be made only when the following two conditions are met:

- (1) The corrected "unit bid price" multiplied by the quantity equals the "amount bid" for the bid item.
- (2) The corrected "unit bid price" is closer to the average of the engineer's estimate and the individual bids for the contract item than the uncorrected "unit bid price".

(e) Omitted "Unit Bid Price" and Omitted "Amount Bid" - Deemed "Zero" Bid: The provisions of this Paragraph shall apply only to bids for contracts not funded with any Federal funds. In the case of omission of the "unit bid price" and the omission of the "amount bid" for any one item and also in the case of the omission of the "amount bid" where a lump-sum price is called for, the "amount bid" and the "unit bid price" shall be deemed to be zero where the value of the omitted "amount bid" is one percent or less of the "total amount bid" for the entire project (excluding the omitted item). The value of the omitted "amount bid" will be derived by determining the average of the engineer's estimate and the individual bids for that contract item. Where the "unit bid price" is deemed to be zero as provided in this Paragraph, such zero "unit bid price" shall constitute the "contract unit price" for the affected bid item. Where the "amount bid" for a lump-sum bid item is deemed to be zero as provided in this Paragraph, such zero "amount bids" shall constitute the "contract lump-sum price" for that bid item. This Paragraph shall not apply to the bid item for "Mobilization".

(f) Unit bid prices containing more than four decimal places: In the case of a Bid Item for which the "amount bid" contains more than four decimal places for the "Unit Bid Price", only the whole number and the first four decimal places shall constitute the "Contract Unit Price" for that Bid Item.

*History Note: Statutory Authority G.S. 136-18.1.; 143B-350(f);*

*Eff. May 1, 1984;*

*Amended Eff. November 1, 1991.*

### **.0815 REJECTION OF BIDS**

(a) Any bid submitted which fails to comply with any of the requirements of Rules .0808, .0809 or .0811 of this Section shall be considered irregular and may be rejected.

(b) Irregularities due to apparent clerical errors and omissions may be waived in accordance with Rule .0818 of this Section.

(c) Any bid including any unit or lump-sum bid price which is significantly unbalanced to the potential detriment of the Department will be considered irregular and may be rejected. In the event the Board determines it is in the best public interest to accept such irregular bid, it may award the contract based on such bid subject to the provisions of subarticle 109-4(B) of the Standard Specifications for Roads and Structures.

(d) In addition to Paragraphs (a), (b), and (c) of this Rule, any bids for contracts not funded with any Federal funds which are submitted by any bidder who has failed to obtain the appropriate General Contractor's license, as required by Chapter 87 of the General Statutes of North Carolina, shall be considered irregular and will not be considered for award.

(e) The right to reject any and all bids shall be reserved to the Board.

*History Note: Statutory Authority G.S. 136-18.1.; 143B-350(f);*

*Eff. April 3, 1981;*

*Recodified from .0813;*

*Amended Eff. November 1, 1991; March 1, 1984.*

### **.0816 DISQUALIFICATION OF BIDDERS**

Any one of the following causes may be justification for disqualifying a contractor from further bidding until he has applied for and have been requalified in accordance with Rule .0801 of this Section:

- (1) unsatisfactory progress in accordance with the terms and conditions of existing or previous contracts as specified in Article 108-8 or Article 105-7 of the Standard Specifications for Roads and Structures.
- (2) being declared in default in accordance with Article 108-9 of the Standard Specifications for Roads and Structures.
- (3) uncompleted contracts which, in the judgement of the Chief Engineer may hinder or prevent the prompt completion of additional work if awarded.
- (4) failure to comply with prequalification requirements.
- (5) the submission of more than one bid for the same work from an individual, partnership, joint venture, or corporation under the same or different names.
- (6) evidence of collusion among bidders.; each participant in such collusion will be disqualified.
- (7) failure to furnish a non-collusion affidavit upon request.
- (8) failure to comply with Article 108-6 of the Standard Specifications for Roads and Structures.
- (9) failure to comply with a written order of the Engineer as provided in Article 105-1 of the Standard Specifications for Roads and Structures, if in the judgment of the Chief Engineer such failure is of sufficient magnitude to warrant disqualification.
- (10) failure to satisfy the Disadvantaged Business Enterprise requirements of the project special provisions.
- (11) The Department has not received the amount due under a forfeited bid bond.
- (12) failure to submit within 60 days after being requested by the Engineer, or the submission of false information in, the documents required by Article 109-9 of the Standard Specifications for Roads and Structures.
- (13) failure to return overpayments as directed by the Engineer.

*History Note: Statutory Authority G.S. 136-18(1);*

*Eff. April 3, 1981;*

*Recodified from .0814;*

*.Amended Eff. November 1, 1991.*

**.0817 CONSIDERATION OF BIDS**

After the bids are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be immediately available to the public. In the event of errors, omissions, or discrepancies in the bid prices, corrections to the bid prices will be made in accordance with the provision of Rule .0818 of this Section. Such corrected bid prices will be used for the comparison and consideration of bids.

The right is reserved to reject any or all bids, to waive technicalities, to request the low bidder to submit an up-to-date financial and operating statement, to advertise for new bids, or to proceed to do the work otherwise, if in the judgement of the board, the best interests of the State will be promoted thereby.

*History Note: Statutory Authority G.S. 136-18(1);*

*143B-350(f);*

*Eff. April 3, 1981;*

*Recodified from .0815;*

*.Amended Eff. November 1, 1991; May 1, 1984.*

**.0818 NON-COLLUSION AFFIDAVIT AND CERTIFICATIONS**

(a) In compliance with Section 112(c) of title 23 USC, and current regulations of the Department, each and every bidder will be required to furnish the Department with an affidavit certifying that the bidder has not entered into any agreement, participated in any collusion, otherwise taken any action in restraint of free competitive bidding in connection with his bid on the project. The affidavit shall also conclusively indicate that the Bidder intends to do the work with its own bona fide employees or subcontractors and it not bidding for the benefit of another contractor.

(b) Affidavit forms will be included in the proposal form as part of the signature sheets. Execution of the signature sheets will also constitute execution of the non-collusion affidavit. The signature sheets shall be notarized.

(c) A non-collusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:

- (1) Transactions between a prime contractor and a person, other than for a procurement contract, for goods or services, regardless of type.
- (2) Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) [currently twenty-five thousand dollars (\$25,000)] under a prime contract.
- (3) Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount, under which that person will have a critical influence on or substantive control over the transaction. Such persons include, but are not limited to, bid estimators and contract managers.

The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 CFR Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.

*History Note: Statutory Authority G.S. 136-18(1); 136-28.1; 143-54;  
Eff. April 3, 1981;  
Recodified from .0816;  
Amended Eff. November 1, 1991; October 1, 1991; July 1, 1982.*

#### **.0819 AWARD OF CONTRACT**

(a) General: The award of the contract, if it be awarded, will be made by the Board of Transportation to the lowest responsible bidder. The lowest responsible bidder will be notified by letter that his bid has been accepted and that he has been awarded the contract. This letter shall constitute the notice of award. The notice of award, if the award be made, will be issued within 60 days after the opening of bids, except that with the consent of the lowest responsible bidder the decision to award the contract to such bidder may be delayed for as long a time as may be agreed upon by the Department and such bidder. In the absence of such agreement, the lowest responsible bidder may withdraw his bid at the expiration of the 60 days without penalty if no notice of award has been issued.

Award of a contract involving any unbalanced bid price(s) may be made in accordance with the provisions of Article 102-15 of the Standard Specifications for Roads and Structures.

(b) Award Limits: A Bidder who desires to bid on more than one project or which bids are to be opened on the same date, and who also desires to avoid receiving an award of more projects than he is equipped to handle, may bid on any number of projects but may limit the total amount of work awarded to him on selected projects by completing the form "Award Limits on Multiple Projects" for each project subject to the award limit. This form will be bound within each proposal form. This form will not be effective unless the amount is filled in and the form is properly signed. In the event that a Bidder is the lowest responsible Bidder on projects subject to the award limit and the value of such projects is more than the "award limit" established by such Bidder, the Board of Transportation will not award such Bidder projects from among those subject to the award limit which have a total value exceeding the award limit. The projects to be awarded to the Bidder will be those projects on which award will result in the lowest total cost to the Department of Transportation.

In determining the lowest total cost to the Department, the options of rejecting a bid or readvertising for new bids may be considered.

All bids submitted without the properly executed form "Award Limits on Multiple Projects" will not be subject to the award limit. In the event that there is a discrepancy between the completed award limit forms submitted by the same Bidder for the different projects in a letting, the Department reserves the right to declare all such award limit forms invalid or to make such interpretation of the discrepancy as may be in the best interests of the Department. However, the presence of such discrepancy shall not be reason for declaring any bid irregular nor shall it invalidate the conditions of his bid bond or bid deposit.

Where a prequalified Contractor bids individually (as opposed to a Joint Venture) on one or more projects and also bids on one or more projects as part of a Joint Venture, such individual Bidder and such Joint Venture will be considered separate bidders in applying the provisions of this Rule.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Recodified from .0817;*

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*Amended Eff. November 1, 1991.*

### **.0820 CANCELLATION OF AWARD**

The Board of Transportation reserves the right to rescind the award of any contract at any time before the receipt of the properly executed contract bonds from the successful bidder.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Recodified from .0818;  
Amended Eff. November 1, 1991.*

### **.0821 RETURN OF BID BOND OR BID DEPOSIT**

All bid bonds will be retained by the Department until the contract bonds are furnished by the successful bidder, after which all such bid bonds will be destroyed unless the individual bid bond form contains a note requesting that it be returned to the bidder or the surety.

- (1) Checks which have been furnished as a bid deposit by all bidders other than the three lowest responsible bidders will be retained not more than 10 days after the date of opening of bids. After the expiration of such period, Department of Transportation warrants in the equivalent amount of checks which were furnished as a bid deposit will be issued to all bidders other than the three lowest responsible bidders.
- (2) Checks which have been furnished as a bid deposit by the three lowest responsible bidders will be retained until after the contract bonds have been furnished by the successful bidder, at which time Department of Transportation warrants in the equivalent amount of checks which were furnished as a bid deposit will be issued to the three lowest responsible bidders.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Recodified from .0819;  
Amended Eff. November 1, 1991.*

### **.0822 CONTRACT BONDS**

The successful bidder, within ten days after the notice of award is received by him, shall provide the Department with a contract payment bond and a contract performance bond each in an amount equal to 100 percent of the amount of the contract. All bonds shall be in conformance with G.S. 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Recodified from .0820;  
Amended Eff. November 1, 1991.*

### **.0823 EXECUTION OF CONTRACT**

As soon as possible following receipt of the properly executed contract bonds, the Department will complete the execution of the contract, retain the original contract, and return one certified copy of the contract to the contractor.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. April 3, 1981;  
Recodified from .0821;  
Amended Eff. November 1, 1991.*

### **.0824 FAILURE TO FURNISH CONTRACT BONDS**

The successful bidder's failure to file acceptable bonds within 10 days after the notice of award is received by him will be just cause for the forfeiture of the bid bond or bid deposit and rescinding the award of the contract. Award may then be made to the next lowest responsible bidder or the work may be readvertised and constructed under contract or otherwise, as the Board of Transportation may decide.

*History Note: Statutory Authorized G.S. 136-18(1);*

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*Eff. April 3, 1981;  
Recodified from .0822;  
Amended Eff. November 1, 1991.*

### **.0825 CONFIDENTIALITY OF COST ESTIMATES AND BIDDING LISTS**

- (a) All cost estimates prepared for the purpose of comparing bids; and the names and identity of corporations, firms, partnerships, individuals or joint venturers who have requested plans or proposal forms for the purposes of bidding, shall be confidential and not disclosed until after the opening of bids.
- (b) This information shall be furnished to the Federal Highway Administration in accordance with written rules, regulations, policies and procedures of the Federal Highway Administration.
- (c) The State Highway Administrator is granted authority to set procedures for the handling, compilation, distribution and disclosure of this information by NCDOT employees prior to the opening of bids.
- (d) As an exception to the confidentiality rule provided for in Paragraph (a), the list of plan holders or potential bidders will be made public pursuant to the following criteria for either or Subparagraphs (1) and (2) of this Rule:
- (1) The list shall be made public on those projects determined by the State Highway Engineer-Design that are of a special nature on which the work is not routine highway work and or a major portion of the work will most likely be done by specialty contractor subcontractors.
  - (2) The list of potential bidders shall be released on the projects in which a pre-bid conference is held.
  - (3) The list of potential bidders will be made available from the Proposals and Contracts Section of the Highway Design Branch one week prior to the opening of bids.
  - (4) Each potential bidder that obtains a set of plans proposals for a project will be given the option of having its name remain confidential.
- (e) The bidder or contractor is cautioned that details shown on the subsurface information are preliminary only and in many cases the final design details are different. For bidding and construction purposes refer to the construction plans and documents for final design information on this project. The Department does not warrant or guarantee the sufficiency or accuracy of the investigation made, nor the interpretations made or opinions of the Department as to the type of materials and conditions to be encountered. The bidder or contractor is cautioned to make such independent subsurface investigations as he deems necessary to satisfy himself as to conditions to be encountered on this project. The contractor shall have no claim for additional compensation or for an extension of time for any reason resulting from the actual conditions encountered at the site differing from those indicated in the subsurface information.

*History Note: Statutory Authority G.S. 133-33;  
Eff. September 1, 1981;  
Amended Eff. May 1, 1983;  
Recodified from .0823;  
Amended Eff. October 1, 1991.*

### **.0826 AWARD LIMITS ON MULTIPLE PROJECTS**

*History Note: Statutory Authority G.S. 136-18, 11;  
Eff. July 1, 1983;  
Recodified from .0824;  
Repealed Eff. November 1, 1991.*

### **.0828 COMPUTER BID PREPARATION**

- (a) A diskette to assist the Bidder in preparing his bid by means of a personal computer will be furnished by the Department if so requested by the Bidder at the same time he orders a proposal form. The diskette will contain an identical copy of the itemized proposal sheets included in the proposal and computer program which may be used to prepare a bid on the sheets. The bid diskette will function properly with an IBM personal computer or compatible computer using DOS.

- (b) The only entries into the program which will be permitted by the bidder are the appropriate unit or lump-sum prices for those items which must be bid in order to provide a complete bid for the project. Unit prices shall be rounded off to four decimal places. When these entries have been made, the program will automatically prepare and print a complete set of itemized proposal sheets which will

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include the amount bid for the various items and the total amount bid for the project in addition to the unit or lump-sum prices bid. This set of itemized proposal sheets, when submitted together with the appropriate proposal form, will constitute the bid and shall be delivered to the Department in accordance with Rule .0812 of this Section. If the Bidder submits his bid on computer generated itemized proposal sheets, bid prices shall not be written on the itemize proposal sheets bound in the proposal form. The computer generated itemized proposal sheets shall be signed by the same individual who has signed the proposal form. The bid diskette furnished by the Department shall be returned with the bid.

(c) In the case of a discrepancy between the unit or lump-sum prices submitted on the itemized proposal sheets and those contained on the diskette furnished to the Department, the unit or lump-sum prices submitted on the itemized proposal sheet shall prevail.

(d) The provisions of Rule .0808 of this Section will apply to the preparation of bids except that the bid may be submitted on computer generated itemized proposal sheets in which case the entries on the itemized proposal sheets will not be required to be in ink. Changes to any entry on the computer generated itemized proposal sheets shall be made in accordance with requirement number 6 of Rule .0808 of this Section. When the Computer Generated Itemized Proposal Sheets are not signed and received with the proposal, this will constitute, no bid received.

(e) The Department will not be responsible for loss or damage to a bid diskette after it has been mailed to the Bidder. If loss or damage occurs, the Bidder may order another bid diskette.

*History Note: Statutory Authority G.S. 136-18(1);  
Eff. November 1, 1991.*

### **.0829 CONTRACT OFFICER**

(a) The position of Contract Officer in the Design Services Unit is the designated Contract Officer for the Department of Transportation. The Contract Officer will execute all construction and repair contracts and handle all correspondence related to irregularities, notification of award, and rejection of bids for such contracts.

(b) If a proposal is accepted and the award is made by the Board of Transportation, the contract is valid only when signed either by the Contract Officer or such other person as may be designated by the Secretary to sign for the Department of Transportation. The conditions and provisions contained in the proposal form cannot be changed except over the signature of the said Contract Officer.

(c) The position of State Design Services Engineer is the designated alternate Contract Officer for the Department of Transportation with the authority to act in behalf of the Contract Officer when the Contract Officer is absent and unable to perform this function.

*History Note: Statutory Authority G.S. 136-18(1); 136-28.1;  
Eff. November 1, 1991.*

## **SECTION .0900 - REGULATIONS FOR INFORMAL CONSTRUCTION AND REPAIR CONTRACTS**

### **.0902 CONTRACT REQUIREMENTS**

*History Note: Statutory Authority G.S. 136-18(1); 136-28.1;  
136-44.1; 136-45; 143-350(f);  
Eff. February 1, 1987;  
Repealed Eff. November 1, 1991.*

## **SECTION .1000 - ADOPT-A-HIGHWAY PROGRAM**

### **.1001 PURPOSE**

The North Carolina Department of Transportation's Adopt-A-Highway Program exists to support the Department's litter abatement efforts.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

### **.1002 DEFINITIONS**

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- (a) "Adoption" shall mean the agreement by an individual or group to pick up litter and trash from a specific section of highway right-of-way.
- (b) "Adopt-A-Highway Program" shall mean the public participation program of the Department designed to assist in the control and reduction of litter on state-maintained highway right-of-way.
- (c) "Adopted Section" shall mean the portion, generally two miles in length, of state-maintained highway right-of-way approved for adoption by volunteers.
- (d) "Authorized Representative" shall mean, in the case of an adoption by a group, the group members acting on behalf of the group for the purpose of adopting a section of highway.
- (e) "Department" shall mean the North Carolina Department of Transportation.
- (f) "Program" shall mean the Adopt-A-Highway Program of the North Carolina Department of Transportation.
- (g) "Program Director" shall mean the Director of Beautification Programs of the North Carolina Department of Transportation who has oversight responsibility for the Program.
- (h) "Program Participants" shall mean the individuals and or groups that have adopted section of highways. Civic and non-profit organizations, and commercial and private enterprises may be selected as groups for the purpose of adopting a section of highway.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

### **.1003 PARTICIPATION IN THE PROGRAM**

- (a) The adoption of a section of highway is a privilege in consideration for public service that may be granted by the Department to individuals and or groups who would assist the Adopt-A-Highway Program in achieving its purpose.
- (b) Only individuals and or groups determined by the Department to be responsible and to exhibit in good faith the willingness and the capacity to perform the responsibilities of the Program will be allowed to adopt a highway. The Department may refuse to grant a request to adopt a section of highway if, in its opinion, granting the request would jeopardize the Program, the counterproductive to its purpose or create a hazard to the safety of the public. Highway safety is a principal concern in all decisions related to the Program. Program participants may be discriminate on the basis of religion, race, national origin, sex or handicap (except where the handicap would affect the individual's safe participation in the Program) with respect to their participation in the Program.
- (c) The Division Engineer or his designee shall approve applications of individuals and or groups applying to participate in the Program. A list of the newly approved participants, by division, shall be submitted to the Program Director for review on the first of each month. The approval of the Division Engineer is final unless the applications is disapproved by the Program Director by the first day of the next calendar month. If the Division Engineer has any uncertainty regarding the qualifications of the individual or group applying to the Program, the Division Engineer shall submit the application and all accompanying documents to the Program Director for final action.
- (d) Initial agreements of adoption will be for a period of one year.
- (e) Each person participating in the Program shall execute a written release of the Department, its officials, employees and agents from any liability arising out of his or her participation in the Program. In the case of a minor, such release shall be executed by a parent or guardian. Physical participation in the Program shall constitute a waiver by the participant of any claim or cause of action of liability against the Department.
- (f) Program participants are encouraged to recycle material collected from the adopted section when it is feasible to do so.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

### **.1004 AGREEMENT**

Any individual and or groups desiring to participate in the Adopt-A-Highway Program will submit an agreement to the Division Engineer of the Division in which the section of highway proposed for adoption is located. The agreement will be in the form prescribed by the Department and will contain at a minimum the following information:

- (1) The highway section to be adopted, as nearly as it can be described;
- (2) The dates of the requested adoption;
- (3) The approximate number of people in the group who will be participating in each cleanup;

- (4) The name, telephone number, and complete street address of the authorized representative for the group and of all members of the group who will actually participate in the Program;
- (5) An acknowledgement by the group of the hazardous nature of the work involved in participating in the Program;
- (6) An acknowledgement that the members of the group agree jointly to be bound by and comply with the terms and conditions set forth in the agreement; and
- (7) The signatures of the Division Engineer, or his designee, and the Authorized Representative of the Program Participant.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

**.1005 RESPONSIBILITIES OF PROGRAM PARTICIPANTS AND DEPARTMENT**

(a) Any individual and/or group participating in the Adopt-A-Highway Program will be subject to each of the following requirements and responsibilities:

- (1) Appointing or selecting an authorized representative to act on behalf of the group;
  - (2) Ensuring that individual participants sign a statement acknowledging that they have attended a safety meeting and view the Department's safety video before participating in the cleanup of the adopted section;
  - (3) Obeying and abiding by the guidelines, safety requirements, and other terms and conditions established by the Department;
  - (4) Picking up litter a minimum of four times a year, and as often as necessary to maintain a clean right-of-way;
  - (5) Ensuring that each individual participant of the group wears a Department approved safety vest or shirt during the pickup;
  - (6) Ensuring that each individual participant of the group wear clothing that will not impair vision or movement during the pickup;
  - (7) Ensuring that attire that might divert the attention of motorist is not worn during clean up activities;
  - (8) Furnishing adequate supervision by one or more adults 21 years of age or older for groups which have participants 12 - 17 years of age;
  - (9) Ensuring that no one under the age of 12 is allowed to participate in the clean up activities;
  - (10) Prohibiting participants from either possessing or consuming alcoholic beverages or other drugs during clean up activities;
  - (11) Ensuring that no signs, posters, or other display material that might distract motorist are brought to the adopted section by group members during or between clean ups;
  - (12) Filing after actions reports as prescribed by the Department; and
  - (13) Ensuring that all provisions of the agreement are fully performed.
- (b) The Department's participation in the Program will include the following:
- (1) Working with the group to determine the specific section of state right-of-way to be adopted;
  - (2) Providing safety vest, trash bags and safety information;
  - (3) Erecting two signs, one at each end of the adopted section, with the group's name or acronym displayed. The size, shape and graphic design of Adopt-A-Highway sign policy as approved by the Secretary of Transportation. In the case of theft, vandalism or destruction of a highway sign, the Department will provide one free replacement of the sign. Thereafter, any replacement sign shall be paid for by the Program Participant;
  - (4) Removing filled trash bags;
  - (5) Removing litter from the adopted section under unusual circumstances, i.e., to remove large, heavy or hazardous items;
  - (6) Monitoring to ensure the objectives of litter abatement are being met; and
  - (7) Monitoring to evaluate the overall operation of the Program and to gauge its effectiveness.

*History note: Statutory Authority G.S. 146-18(10);  
Eff. November 1, 1991.*

**.1006 GENERAL LIMITING CONDITIONS**

(a) Administrative, legislative and financial constraints subject Adopt-A-Highway Program to certain imitations.

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- (b) The Program may, at any time and for any reason, be modified in scope or altered in any other manner at the sole discretion of the Department.
- (c) The Department shall consider any factors it considers to be appropriate in determining what highways will be and will not be eligible for adoption.
- (d) The Department reserves the right to determine the designation of the section of right-of-way to be adopted. The Department will consider community sentiment in determining the designation of the section of right-of-way to be adopted.
- (e) State roads in residential neighborhoods will not normally be available for adoption. Exceptions would include roads adopted by the neighborhood residents. Underlying fee owners' objections to a specific adoption will be considered.
- (f) The Department is generally prohibited by law from expending any funds, directly or indirectly, for the purpose of influencing the outcome of any election or the passage of any legislation. If any of the Program's actions are determined to be contrary to any statutory restrictions, or any restrictions on the use of appropriated funds for political activities, the Department will have the right to take any necessary remedial action, including, but not limited to, the removal of the erected signs displaying the Program Participant's name or acronym and/or the termination of the adoption agreement.
- (g) Names, titles or words placed on Adopt-A-Highway signs must be approved by the North Carolina Department of Transportation.

*History Note: Statutory Authority G.S. 138-18(10);  
Eff. November 1, 1991.*

### **.1007 MODIFICATION/RENEWAL/TERMINATION OF THE AGREEMENT**

- (a) The Adopt-A-Highway agreement may be modified in scope or altered in any other manner at the discretion of the Department.
- (b) Program participants will have the option of renewing the agreement, subject to the approval of the Department and the continuation of the Program by the Department. Information concerning Program participants is to be updated at the time of renewal.
- (c) The Department may terminate the agreement and/or remove the Adopt-A-Highway signs bearing the Program participant's name or acronym if it finds and determines that the participant is not meeting the terms and considerations of the agreement, that the participant is acting contrary to the guidelines of the Program, that the adoption is proving to be counter productive to the Program's purpose, that undesirable results, such as increased litter, vandalism or sign theft, are resulting from the adoption, that Program participants have engaged in irresponsible conduct at the adopted section which would bring discredit upon the State, or that other good cause exist to terminate the agreement and/or remove the Adopt-A-Highway sign.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

### **.1008 TERMINATION OF THE PROGRAM**

The Adopt-A-Highway Program may at any time for any reason be terminated.

*History Note: Statutory Authority G.S. 136-18(10);  
Eff. November 1, 1991.*

## **SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS**

### **SECTION .0200 - OUTDOOR ADVERTISING**

#### **.0207 FEES AND RENEWALS**

- (a) Initial and annual renewal fees shall be required to be paid by the owners of the outdoor advertising structures for each permit requested in order to defer the costs of the administrative and inspection expenses incurred by the Division of Highways of the Department of Transportation in administering the permit procedures.
- (b) An initial nonrefundable fee of sixty dollars (\$60.00) per outdoor advertising structure shall be submitted with each application for a permit, and an annual nonrefundable renewal fee of thirty dollars (\$30.00) per sign structure shall be paid by the owners of the outdoor advertising structures on April

15 of each year to the appropriate district engineer. The owners of outdoor advertising structures must return the information required under Paragraph (c) of this Rule with their annual renewal fees.

(c) The Division of Highways of the Department of Transportation shall, without request, send a statement to each owner of outdoor advertising structure(s) with valid permit for the annual renewal fee or fees and a renewal application. For a renewal to be approved, the renewal application must include:

- (1) Existing Sign Permits issued prior to March 1, 1990 - Retain existing permit renewal requirements of paying renewal fee upon receipt of invoice from Department.
- (2) Renewal of permit(s) which were issued on or after March 1, 1990 - If the lease or property interests and/or the right-of-entry agreements do not continue in full force and effect, the renewal application must include those documents as required under 19A NCAC 2E .0206(a).

*History Note: Statutory Authority G.S. 136-130; 136-133;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; December 1, 1990;  
July 1, 1986; January 1, 1983.*

**.0210 REVOCATION OF PERMIT**

Any valid permit issued for a lawful outdoor advertising structure shall be revoked by the appropriate district engineer for any one of the following reasons:

- (1) mistake of material facts by the issuing authority for which had the correct facts been made known, the outdoor advertising permit in question would not have been issued;
- (2) misrepresentations of material facts by the outdoor advertiser on the application for permit for outdoor advertising;
- (3) failure to pay annual renewal fees and/or provide the documentation required under Rule .0207(c) of this Section;
- (4) failure to construct the outdoor advertising structure and affix the permanent emblem within 180 days from the date of issuance of the outdoor advertising permit;
- (5) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act and the rules and regulations promulgated by the Board of Transportation pursuant thereto;
- (6) making alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause which would cause it to be other than substantially the same as it was on the date the sign became nonconforming, or a grandfather clause sign. Alterations to a sign include any of the following:
  - (a) enlarges a dimension of the sign facing, or that raises the height of the sign;
  - (b) changing the material of the sign structure's support;
  - (c) adding a pole or poles;
  - (d) adding illumination; or
  - (e) any other alteration of a nonconforming outdoor advertising structure.
- (7) failure to affix permanent permit emblem within 30 days after erection of the outdoor advertising structure;
- (8) unlawful destruction of trees or shrubs or other growth located on the right of way in order to increase or enhance the visibility of an outdoor advertising structure;
- (9) unlawful violation of the control of access on interstate, freeway, and other controlled access facilities;
- (10) failure to maintain a sign such that it remains blank for a period of 12 consecutive months;
- (11) failure to maintain a sign such that it reaches a state of dilapidation as defined in Rule .0201(y) of this Section;
- (12) abandonment, or destruction of a sign.

*History Note: Statutory Authority G.S. 136-130; 136-134;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; December 1, 1990.*

**.0213 APPEAL OF DECISION OF DISTRICT ENGINEER TO SEC. OF TRANS.**

- (a) Should any owner of an outdoor advertising structure disagree with a decision of the appropriate district engineer pertaining to the issuance or revocation of permits for outdoor advertising, the owner

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of the outdoor advertising structure shall have the right to appeal to the Secretary of Transportation pursuant to the procedures hereinafter set out.

(b) The owner of the outdoor advertising structure who decides to appeal a decision of the district engineer shall so notify the appropriate district engineer of his decision to appeal by certified mail, return receipt requested, within 10 days of the receipt of notice of the decision of the district engineer. The district engineer shall then forward the notice given to him by the outdoor advertiser to the Secretary of Transportation.

(c) Within 20 days from the time of submitting his notice of appeal to the district engineer, the owner of the outdoor advertising structure shall submit to the Secretary of Transportation a written appeal setting forth with particularity the facts upon which his appeal is based.

(d) Within 90 days from the receipt of the said written appeal or within such additional time as may be agreed to between the Secretary of Transportation and the owner of the outdoor advertising structure, the Secretary of Transportation shall make an investigation of the said appeal. The Secretary of Transportation shall then make appropriate findings of fact and conclusions pertaining to the appeal on behalf of the Department of Transportation and the findings and conclusion shall be served upon the outdoor advertiser seeking the review by certified mail, return receipt requested. However, if the decision of the secretary is that the outdoor advertising structure in question is unlawful, then the findings and conclusion shall be served upon the owner of the outdoor advertising structure by certified mail, return receipt requested.

*History Note: Statutory Authority G.S. 136-130; 136-133; 136-134;*

*Eff. July 1, 1978:*

*Amended Eff. November 1, 1991; June 15, 1981.*

### **.0216 SPECIFIC INFORMATION SIGNING PROGRAM**

The Specific Information Signing Program, hereinafter "Program", provides certain eligible businesses with the opportunity to be listed on official signs within the right-of-way of interstate highways and fully controlled access highways. The Traffic Engineering Branch is responsible for receiving requests for information concerning the Program. Direct request to the State Traffic Engineer, Division of Highways, Department of Transportation, P. O. Box 25201, Raleigh, N. C. 27611. Division Engineers for the division in which the interchange is located are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements in accord with the rules, regulations, policies and procedures of the board and the department.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139;*

*143B-346; 143B-348; 143B-350(f);*

*23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);*

*Eff. April 1, 1982:*

*Amended Eff. October 1, 1991; November 1, 1985.*

### **.0218 LOCATION OF PANELS**

The department shall control the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with following criteria:

- (1) The department may erect panels at rural interchanges. The department may also erect panels at an interchange within a municipal corporate limit with a population of 25,000 or less, at the time application for business signs is made. If an interchange is taken into a municipal corporate limit after the initial business signs are erected, business signs may be added to the original panels until the panels have the full complement of business signs. No additional panels will be erected at an interchange that has been taken into a municipal corporate limit with 25,000 population or greater.
- (2) Panels shall be fabricated and located as detailed on the signing plans for the interchanges and shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.
- (3) A separate mainline panel shall be provided on the interchange approach for each qualified type of motorist service except as provided in (d) of this Rule. No more than one panel shall be erected for a type of service in each direction approaching an interchange. Where a qualified type of motorist service is not available at an interchange, the panel may not be erected. A maximum number of six specific business (logo) signs may be installed on any logo panel for each service type at an interchange.

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- (4) The mainline panels shall be erected between the previous interchange and 800 feet in advance of the exit direction sign for the interchange from which the services are available. The panels should be placed in alignment farther from the roadway (preferably 40 feet from roadway) than that of guide signs. There shall be at least 800 feet spacing between the panels and guide signs. In the direction of traffic, the successive panels shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order. A combination type panel may be used in remote rural areas of the Interstate System, or other fully controlled access highway and when space does not permit all signs and only two of each type of service is available at the location. A maximum of three business signs may appear below each respective service on a combination type panel. If all four services are available, "GAS" and "FOOD" should be combined on one sign, and "LODGING" and "CAMPING" should be combined on one sign. When the number of business facilities at a rural interchange are increased to more than three for one or more services, existing combination service business signing must be removed and replaced with sign panels, dedicated to each service. If the spacing limitations prohibit the erection of Specific Information Panels for all of the types of services available, preference shall be given to "GAS", "FOOD", "LODGING" or "CAMPING" services in that order. No panels shall be erected where minimum spacing limitations cannot be met.
- If a panel(s) cannot be erected due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected below existing guide sign(s). Not more than three services may be erected below an existing guide sign.
- (5) On each exit ramp, a ramp panel for the qualified type of motorist service may be erected. If all of the qualified services are visible from the exit ramp terminal, ramp panels are not required.
- (6) The ramp panel shall be erected as detailed on the signing plans for the interchange. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order.
- (7) The signing panels on the ramps should be consistent with those on the mainline. If there is insufficient space on the ramp or the mainline for all the panels, priority shall be given to "GAS", "FOOD", "LODGING", then "CAMPING" services in that order. If panel(s) cannot be erected on a ramp due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected.
- (8) Panels shall not be erected at an interchange where the motorist cannot conveniently re-enter the freeway and continue in the same direction of travel. Panels shall not be erected at any interchange with another controlled access facility.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. October 1, 1991; April 1, 1986; November 1, 1985.*

### **.0219 ELIGIBILITY FOR PROGRAM**

Business signs may be permitted, provided said businesses comply with the following criteria and have a public telephone:

- (1) The individual business installation whose name, symbol or trademark appears on a business sign shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin. An individual business may apply for additional sign positions on a sign panel provided no qualified applicant is denied space on the sign panel. An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.
- (2) The maximum distance that a "GAS" "FOOD", or "LODGING" service can be located from the Interstate, or other fully controlled access highway shall not exceed three miles, with the maximum distance being ten miles for a "CAMPING" service, in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the Interstate or other fully controlled access highway route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the

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business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than .2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

- (3) "GAS" and associated services. Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law;
  - (b) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
  - (c) restroom facilities and drinking water suitable for public use;
  - (d) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs;
  - (e) year-round operation at least 16 continuous hours per day, seven days a week.
- (4) "FOOD". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, and a permit to operate by the health department;
  - (b) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;
  - (c) indoor seating for at least 20 persons;
  - (d) public restroom facilities.
- (5) "LODGING". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, and a permit to operate by the health department;
  - (b) adequate sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room;
  - (c) off-street vehicle parking for each lodging room for rent;
  - (d) year-round operation.
- (6) "CAMPING". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
  - (b) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
  - (c) adequate parking accommodations;
  - (d) continuous operation, seven days a week during business season;
  - (e) removal or masking of said business sign by the department during off seasons, if operated on a seasonal basis.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. October 1, 1991; September 1, 1990; November 1, 1987; April 1, 1986.*

### **.0222 CONTRACTS WITH THE DEPARTMENT**

- (a) The department shall perform all required installation, maintenance, removal and or replacement of all business signs upon panels.
- (b) Individual businesses requesting placement of business signs on panels shall apply by submitting to the Department of Transportation a completed Agreement form. As a condition of said Agreement, the applicant must agree to submit the required initial fee within 30 days after the business is approved by the department. The department shall provide a statement(s) to the applicant at the time agreements are provided that itemize the number of business signs required, their fee(s) and remittance requirements. Failure to submit the required fee and forms will result in removal by the department of the business's signs from the construction project plans.
- (c) Businesses must submit a layout of their proposed business sign for approval by the department before the business sign is fabricated.
- (d) No business sign shall be displayed which, in the opinion of the department, is unsightly, badly faded, or in a substantial state of dilapidation. The department shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance services shall be performed

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by the department at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of these Rules and the business sign shall be removed. The business shall furnish all business signs.

(e) When a business sign is removed, it will be taken to the division traffic services shop of the division in which the business is located. The business will be notified of such removal and given 30 days in which to retrieve their business sign(s). After 30 days, the business sign will become the property of the department and will be disposed of as the department shall see fit.

(f) Should the department determine that trailblazing to a business that is signed for at the interchange is desirable, it shall be done with an assembly (or series of assemblies) consisting of a ramp size business sign and an appropriate white on blue arrow. The business shall furnish all business sign(s) required and deemed necessary by the department. Fees shall be same as for other business sign(s). If several different services are located on the same business site, duplicate type logo signs shall not be erected in a single logo trailblazer installation. In such trailblazer installations, only one logo sign and one directional arrow sign will be used. The business may submit, subject to approval by the department, different logo signs to identify different services which may be located on the same business site.

(g) Should a business qualify for business signs at two interchanges, the business sign(s) will be erected at the nearest interchange. If the business desires signing at the other interchange also, it may be so signed provided it does not prevent another business from being signed.

(h) Where there are more businesses which meet the criteria to participate in the program than space is available on the panel(s), then those businesses closer to the interchange, measured as described in Rule .0219(b), shall be permitted to participate, except as provided for in Rule .0221 (a), (e), and (f).

A business, under construction, shall not be allowed to apply for participation in the program if its participation would prevent an existing open business applicant from participating, unless the open business has turned down a previous opportunity offered by the Department to participate in the program as provided in Rule .0222 (i). After approval of an application to participate a business, under construction, shall be allowed priority participation over another business, which qualifies and becomes open for business prior to the time specified for opening in the application by the business under construction.

(i) Should the number of businesses of a particular service at an interchange increase to more than the maximum number of business signs allowed on a panel, and a closer business qualifies and requests installation of its business signs, the business sign(s) of the farthest business shall be removed at the renewal date, provided that any business which has previously paid the full cost of erecting a panel shall not be removed under this Rule. A business with more than one sign displayed on any panel shall have the additional sign(s) removed at the end of a contract period when other qualifying business(es) applies for space on the panels. A business which has turned down a previous opportunity offered by the department to participate in the program may not qualify as a closer business under this Rule, except as provided in Rule .0221 (a), (e), and (f).

A business closed for reconstruction or renovation, or for restoration of damages caused by fire or storm shall notify the division engineer's office immediately upon closing. The business will be granted a specified time period, up to one year, to complete the construction, renovation, or restoration, provided all logo fees are maintained and the same type of qualifying service is provided after reopening, even if under a different business name. The business signs will be removed from the panels and stored by the department until notice of reopening is received. The signs will then be reinstalled upon payment of a fee of twenty-five dollars (\$25.00) per sign. At the time specified for reopening, if the business under construction, reconstruction, renovation, or restoration is found not to be in compliance, or not open for business, the Division Engineer, or his employee shall promptly verify the information.

(j) When it comes to the attention of the department that a participating business is not in compliance with the minimum state criteria, the division engineer's office shall promptly verify the information and if a breach of agreement is ascertained, inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will be removed. If the business is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant.

At the time specified for opening, if the business under construction is found to not be in compliance, or not open for business, the Division Engineer shall promptly verify the information. If a breach of agreement is ascertained, the Division Engineer shall inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will not be erected. If the business later applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

(k) The department reserves the right to cover or remove any or all business signs in the conduct of maintenance or construction operations, or for research studies, or whenever deemed by the department to be in the best interest of the department or the traveling public, without advance notice thereof. The department reserves the right to terminate this program or any portion thereof by furnishing the business written notice of such intent not less than 30 calendar days prior thereto.

(l) The transfer of ownership of a business for which an agreement has been lawfully executed with the original owner shall not in any way affect the validity of the agreement for the business sign(s) of the business, provided that the appropriate division engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. October 1, 1991; September 1, 1990; November 1, 1987; April 1, 1986.*

## **SECTION .0400 - GENERAL ORDINANCES**

### **.0404 HIGHWAY OBSTRUCTIONS INTERFERING WITH TRAFFIC/MAINTENANCE**

Highway obstructions includes driveway headwalls, fences, rural mailboxes, newspaper delivery boxes and other roadside obstructions interfering with traffic or maintenance.

- (1) It shall be unlawful to place any highway obstruction, including a driveway headwall, fence, rural mailbox, newspaper delivery box or other roadside obstruction, so as to interfere with the traffic or maintenance of the roads and highways of the state highway system.
- (2) Effective April 5, 1991, after a determination based upon current safety standards that any highway obstruction, including a driveway headwall, fence, rural mailbox, newspaper delivery box, its supports or other roadside obstruction, constitutes an unreasonable roadside collision hazard, the highway obstruction shall be removed within 30 days after written notice to the person responsible for placing the obstruction within the right of way.
- (3) Only mailboxes and or newspaper delivery boxes with non-rigid type posts, such as a 4" x 4" wooden or a small diameter metal type, are permitted on road additions to the state highway system after May 3, 1990. This policy prohibits the location within the right of way of an addition to the system of any brick columns or mailboxes and or newspaper delivery boxes on rigid stands such as block, stone, or any other type determined to be a traffic hazard.
- (4) The failure of the person responsible for placing the unlawful obstruction within the right of way, to remove the obstruction within 30 days after written notice by the Department of Transportation shall constitute a misdemeanor. Failure to remove or make safe any mailbox and or newspaper delivery box, its supports or any other obstruction within the specified 30 days of this Rule shall be cause for the Department's Division Engineer to take action to remove the unacceptable mailbox and or newspaper delivery box, its supports or other obstruction installation and also bill the responsible party for the expense of removal if appropriate.
- (5) The publication entitled "A Guide for Erecting Mailboxes on Highways" published by the American Association of State Highway and Transportation Officials, dated May 24, 1984, shall be applied in carrying out this ordinance.

*History Note: Statutory Authority G.S. 136-18(5); 136-90; 136-93; 143B-350(13); Eff. July 1, 1978; Amended Eff. October 1, 1991.*

### **.0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS**

It shall be unlawful, within any scenic service overlook, rest area or other designated parking area on the primary and secondary roads and highways of the state, for any person, firm or corporation to erect tents, booths, or structures of any kind for camping or any other activity; to create loud music or other objectionable noise; except as permitted pursuant to 19A NCAC 2F .0800 of the North Carolina Administrative Code, to solicit contributions, names, support or for any other purpose; to conduct or participate in public or private auctions and other ceremonies; to distribute tracts, pamphlets, favors or any material, product or literature; to erect displays, signs, or carry on any commercial activity; to

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use public address systems; to distribute or use alcoholic beverages; to engage in disorderly conduct or use vulgar, obscene or profane language; or, to commit any nuisance producing a material annoyance, inconvenience, hurt, discomfort, or that is dangerous to the life, property and welfare of the traveling public.

*History Note: Statutory Authority G.S. 136-18(9); 136-125;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991; August 1, 1986.*

### **.0417 COMMERCIAL ENTRANCES INTERSECTING WITH RIGHT OF WAY**

It shall be unlawful to revise or construct any commercial entrances to intersect with the right of way of any primary or secondary highway or road of the State Highway System until a permit has first been obtained from the Department of Transportation or its authorized agent in accordance with the Rules and Regulations contained in 19A NCAC 2B, Section .0600, titled "Driveway Entrances".

*History Note: Statutory Authority G.S. 136-18(10); 136-93;  
Eff. July 1, 1978;  
Amended Eff. October 1, 1991.*

### **.0421 UTILITY WIRES OR CABLES OVER HIGHWAYS**

It shall be unlawful to construct any power, telephone, television, telegraph, or any other utility wires or cables over highways or roads on the State Highway System unless such wires have the minimum vertical clearance above the highest elevation of the road or highway crossed by them as prescribed in the American National Standards Institute's National Electrical Safety Code for the installation and maintenance of electric supply and communication lines, as amended and as may be amended by the National Electrical Safety Code; except, a minimum vertical clearance of 18 feet shall be maintained for overhead power and communication lines crossing all highways. The lateral and vertical clearance from bridges should conform with the National Electrical Safety Code; however, greater clearances at bridges may be required by the Department of Transportation to provide for bridge construction and maintenance. Parallel utility lines occupying highway right of way shall maintain a minimum vertical clearance of (15.5) feet as stated in the National Electrical Safety Code.

**Note:** Rules for the preparation and submission of applications for utility encroachments can be found in 19A NCAC 2B .0500.

*History Note: Statutory Authority G.S. 136-18(10); 136-89.50; 136-93;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0424 TWIN TRAILERS ACCESS ROUTES**

*History Note: Authority G.S. 20-115.1;  
Board of Transportation minutes on November 18, 1989;  
Eff. September 1, 1990;  
Repealed Eff. November 1, 1991.*

### **.0425 ACCESS ROUTES/SEMI-TRAILER TRUCKS WITH 48/53 FOOT TRAILERS**

*History Note: Statutory Authority G.S. 20-115.1; 20-116;  
Eff. October 1, 1991;  
Repealed Eff. November 1, 1991.*

### **.0426 ACCESS ROUTES FOR STAA DIMENSIONED VEHICLES**

The "Rules for Twin-Trailer Truck Access Routes" adopted by the Board of Transportation on November 18, 1988, and the "Rules for Access Routes for Semi-Trailer Trucks with 48/53-Foot Trailers" adopted by the Board on October 13, 1989, are hereby amended in this Section.

#### **(1) DEFINITIONS:**

- (a) STAA Dimensioned Vehicles:**
  - (i) "Twin-trailer trucks"** - The vehicle combination consisting of a truck-tractor and two trailing units, 102 inches wide, as authorized by G.S. 20-115.1.

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- (ii) "48-foot Semi-trailers trucks" - The vehicle combination consisting of a truck-tractor and one trailer 48 feet in length, 102 inches wide, as authorized by G.S. 20-115.1.
  - (iii) "53-foot Semi-Trailers trucks" - The vehicle combination consisting of a truck-tractor and one trailer 53 feet in length, 102 inches wide, and a "kingpin" axle distance of 41 feet, as authorized by G.S. 20-115.1 and G.S. 20-116.
  - (b) National Truck Network - A network of highway routes within the State consisting of the Interstate and certain Federal-aid Primary highways designated for STAA dimensioned vehicle use by the U.S. Secretary of Transportation, and other highway routes that have been designated for this type vehicle use by the North Carolina Department of Transportation under the authority of G.S. 20-115.1(g).
  - (c) "Terminal" - The term "terminal" means any location where:
    - (i) Freight either originates, terminates, or is handled in the transportation process, or
    - (ii) Commercial motor carriers maintain operating facilities.
  - (d) "Reasonable Access" - The term "reasonable access" means provisions for STAA dimensioned vehicle access to terminals and services from the National Truck Network, as defined in Paragraph (1)(d)(i)(ii) (A)(B) of this Rule:
    - (i) Terminals Located Within Three Road Miles of the National Truck Network:
      - (A) Reasonable access shall be deemed to be the use of the most reasonable, and practical route(s) available for access to terminals, and services for gas, food, lodging, and repairs.
      - (B) An access route(s) may only be denied by the Department of Transportation based on specific safety reasons on individual routes.
    - (ii) Terminals Located Beyond Three Road Miles of the National Truck Network:
      - (A) Reasonable access shall be deemed to be the use of only those routes specifically authorized by the Department of Transportation, or provided for in this Section, for access to terminals.
      - (B) Authorization by the Department of Transportation shall consist of an application review and approval process for these access routes, as provided in this Section. An application process is utilized, since access route approval by permit for twin-trailer trucks is prohibited by G.S. 20-119(a).
- (2) REASONABLE ACCESS PROCEDURES:
- (a) STAA dimensioned vehicles are allowed "reasonable access" between terminals and the National Truck Network only in accordance with this Section.
  - (b) For access to terminals and service facilities located within three road miles of the National Network no filing or authorization by the Department of Transportation is required.
  - (c) For access to terminals located beyond three road miles from the National Truck Network in the procedures shown in Paragraph (2)(c)(i) through (vii) of this Rule shall apply:
    - (i) Access routes approved prior to June 1, 1991 for any one particular type of STAA dimensioned vehicle are approved for all STAA dimensioned vehicles for access purposes only.
    - (ii) Terminal officials and truck operators shall submit an application for a proposed new access route(s) to the State Traffic Engineer of the Department of Transportation for approval. The application shall be on a form provided by the State Traffic Engineer. The submittal shall also include a map, or photocopy of a portion of a map, showing the proposed access route(s) or changes to an existing approved access route(s) and the terminal location.
    - (iii) When appropriate, the State Traffic Engineer will seek advice from the State Highway Patrol, the Division of Motor Vehicles, or other appropriate law enforcement officials concerning the application.
    - (iv) Public notice of all applications for "reasonable access" pursuant to this Paragraph (2)(c) shall be published by the Department of Transportation in a newspaper regularly circulated in the affected area of the State. The notice shall be published at least once a week on the same day of the week for two consecutive weeks. In addition, governing bodies of incorporated municipalities will be notified by the Department of Transportation of all applications within their jurisdictions.
    - (v) Access Route Review and Evaluation:
      - (A) The review and evaluation process of access routes will utilize the application of vehicle templates where suitable roadway plans or photographs are available for the requested route(s). Where such plans or photographs are not available and the use of vehicle templates is not practical, the State Traffic Engineer shall require the terminal official or truck operator requesting the access route(s) to furnish an appropriate STAA dimensioned test vehicle and driver for the purpose of observing the test vehicle traverse the requested access route(s).

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- (B) Since traffic safety is the overriding concern, the following safety factors shall also be taken into consideration in reviewing and evaluating a requested access route(s):
- (I) traffic congestion,
  - (II) traffic volumes,
  - (III) route length,
  - (IV) vehicle mix,
  - (V) geometric design of the highway,
  - (VI) intersection geometrics,
  - (VII) width of the shoulders,
  - (VIII) width of pavement,
  - (IX) superelevation of the pavement,
  - (X) pavement condition,
  - (XI) at-grade railroad crossings,
  - (XII) stopping sight distance,
  - (XIII) percentage passing sight distance,
  - (XIV) speed limits,
  - (XV) vertical and horizontal alignment,
  - (XVI) ability of other vehicles to pass trucks,
  - (XVII) widths of bridges,
  - (XVIII) previous accident experience, and
  - (XIX) location of schools.

This does not preclude consideration of their relevant safety factors, not included in Paragraph (2)(v)(B)(1) through (XIV).

- (vi) A route(s) used for the purpose of connecting two National Truck Network routes is considered a "short-cut" route(s) and is not authorized by these Regulations. Such a route(s) may be considered for designation as an addition to the National Truck Network by the Department of Transportation under G.S. 20-115.1(g).
- (vii) The State Traffic Engineer shall have a period of 90 days from receipt of any fully completed application pursuant to this Subparagraph (c) (3) (b) to approve or reject the applied for route(s) based on safety considerations and the review and evaluation process outlined in Subparagraph (c) (3) (e). Terminal official and truck operators requesting an access route(s) and appropriate law enforcement officials will be notified of any approval or rejection and the reasons. Automatic approval of a requested access route(s) is provided if such notification is not received within the 90 day period.
- (d) The Department of Transportation shall notify appropriate State and local law enforcement officers of an approved "reasonable access" route(s) that serves each terminal within the jurisdiction of the enforcement agency. The State Traffic Engineer shall also make available to terminal officials and commercial motor vehicle operators information regarding reasonable access to and from the National Truck Network.
- (e) The Department of Transportation may, at any time subsequent to approval, revoke any routes as a "reasonable access" route(s) based on safety considerations. Terminal officials, truck operators, and appropriate law enforcement officials will be notified in writing 30 days prior to any revocation.
- (f) Any STAA dimensioned vehicle traveling an access route(s) shall have on board an appropriate cargo manifest.
- (g) Approval of an access route(s) for one particular type STAA dimensioned vehicle shall constitute approval for all STAA dimensioned vehicles for access purposes only.
- (h) Appeal - A terminal official, truck operator, or an appropriate law enforcement official may appeal the rulings concerning an access route(s) made by the State Traffic Engineer to the Secretary of Transportation. In giving notice of appeal, the documentation to support reasons for believing that the determination of the State Traffic Engineer was erroneous shall be provided. The decision of the Secretary of Transportation shall be the final agency decision.

*History Note: Statutory Authority G.S. 20-115.1; 136-18; 143B-350;  
Board of Transportation Minutes for November 18, 1988;  
Eff. November 1, 1991.*

## **SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY**

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**.0602 REQUESTS FOR PERMITS**

- (a) Applications for selective vegetation thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of the business or advertisement to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways.
- (b) Selective vegetation thinning, pruning, or removal will be permitted only for the permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed. The provisions will not be used to provide visibility to undeveloped property.
- (c) Applications must be accompanied by a sketch showing the requested limits of the selective thinning, pruning, or removal of vegetation. For outdoor advertising displays, these limits shall be restricted to a maximum of 125 feet, in each direction, measured along the highway right of way line, from the center of the advertising display. For commercial, industrial, institutional and office facilities, the limits of selective clearing or thinning shall be restricted to the area of right of way immediately adjacent to frontage property of the facility, but not to exceed 1,000 linear feet.
- (d) Applications for permits for vegetation cutting to be performed on State Highway right of way must be accompanied by written authorization(s) by the underlying fee owner(s) of all property upon which cutting is to take place, provided that where the right of way was secured in fee simple by the Department, such authorization will not be required. The application must also be accompanied by written authorization of all owners of property abutting the area to be cut.
- (e) The selective vegetation control request will be investigated on site by Maintenance and Roadside Environmental personnel and a representative of the applicant.
- (f) If the application for vegetation cutting is for a site located within the corporate limits of a City or Town, local officials will be given the opportunity to review the application if the City or Town has previously advised the Division Engineer of their desire to review such applications.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982; for a Period of 48 Days to Expire on June 1, 1982; Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9); Eff. June 1, 1982; Amended Eff. November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982.*

**.0603 ISSUANCE OR DENIAL OF PERMIT**

- (a) Within 30 days following receipt of the application, the Division Engineer will approve or deny the application. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.
- (b) The application will be denied by the Division Engineer if:
- (1) It requires removal of trees that were in existence before the business or advertisement was established unless the applicant submits an approved plan for replacement plantings. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.
  - (2) The application is for the opening of view to a sign or business which has been declared illegal or is currently involved in litigation.
  - (3) It is determined that the facility or advertisement is not screened from view.
  - (4) The application is for the opening of view to an outdoor advertising sign which was obscured from view at the time of erection of the sign.
  - (5) Removal of vegetation will adversely affect the safety of the traveling public.
  - (6) Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project. (Exceptional conditions may dictate a replacement, relocation, trimming, or pruning of this planted material.)
  - (7) Planting was done in conjunction with a designed noise barrier.
  - (8) The applicant has not performed satisfactory work on previous requests under the provisions of this policy (this may not be cause for denial if the applicant engages a qualified firm to perform the work).
  - (9) It involves opening of views to junkyards.
  - (10) The application is contrary to ordinances or rules and regulations enacted by local government, within whose jurisdiction the work has been requested to be performed.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982; for a Period of 48 Days to Expire on June 1, 1982; Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9);*

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*Eff. June 1, 1982;  
Amended Eff. November 1, 1991; December 1, 1990;  
August 1, 1985; June 2, 1982.*

### **.0604 CONDITIONS OF PERMIT**

- (a) Selected vegetation within the approved limits shall be thinned, pruned, or removed by the Permittee or his agent in accordance with accepted horticultural practices. Roadside Environmental personnel will identify specific trees, shrubs, etc., which may be pruned, thinned, or removed. Selected individual plants to be removed will first be undergrowth or those which are dead, diseased, disfigured or otherwise lacking aesthetic quality. Removal of selected plants which are crowded and cannot fully develop in their existing locations may be the second stage of removal, if warranted.
- (b) The Permittee may be required to furnish a performance bond or check in an amount determined by the Division Engineer to run concurrently with the permit, as deemed necessary.
- (c) A Division of Highways Roadside Inspector shall be present while work is underway.
- (d) Permits may be issued for multiple sites; however, a permit must be secured prior to performing any vegetation control work. Routine maintenance by the Permittee or his agent will not be permitted.
- (e) The Permittee or his agent shall not impede traffic on the highway in performing the work. Access to the work site on controlled access highways must be gained without using the main travelway of the highway. The Division Engineer will determine traffic control signing which may be required. It shall be the Permittee's responsibility to furnish, erect and maintain the required signs as directed by the Division Engineer.
- (f) Any damage to vegetation which is to remain, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the Permittee to the satisfaction of the Division Engineer. All trimmings, laps, and debris shall be removed from the right of way and disposed of in areas provided by the Permittee. No burning or burying shall be permitted on the highway right of way. When chipping is used to dispose of trimmings, chips may be neatly spread on right of way at locations acceptable to the Division Engineer.
- (g) Upon satisfactory completion of all work, the Roadside Inspector shall notify the Division Engineer who will notify the Permittee in writing of such acceptance, terminate the permit, and return the performance bond or check.
- (h) Failure to comply with all the requirements specified in the permit, unless otherwise mutually resolved, will result in immediate revocation of the permit and forfeiture of any or all of the performance bond or check as determined by the Division Engineer.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982,  
for a Period of 48 Days to Expire on June 1, 1982;  
Statutory Authority G.S. 136-18(5); 136-18(7); 136-18(9);  
Eff. June 1, 1982;  
Amended Eff. November 1, 1991; August 1, 1985;  
August 1, 1982; June 2, 1982.*

## **SECTION .0700 - PROFESSIONAL OR SPECIALIZED SERVICES**

### **.0701 EMPLOYMENT OF PROFESSIONAL/SPECIALIZED FIRM: AUTHORIZATION**

- (a) The State Highway Administrator as conferred by law and delegated or prescribed by the Secretary or Board of Transportation has the authority to enter into and execute contracts with any private agency, firm or individual to provide professional engineering services or other kinds of professional or specialized services in connection with highway construction or repair.
- (b) The managers of Highway Design, Planning and Research, Traffic Engineering, Right of Way, Construction and Maintenance Branches, are delegated the authority by the State Highway Administrator to enter into and execute contracts with any private agency, firm or individual to provide professional engineering services or other kinds of professional or specialized services in connection with highway construction or repair which shall be awarded in accordance with provisions of this Section and G.S. 136-28.1(f).
- (c) The employment by contract of any agency, firm or individual may be authorized and executed by any of the branch managers listed under any of the following conditions:
- (1) The required work necessitates engineering or professional expertise and services not available on the staff of the department; or

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- (2) The required work can be accomplished more effectively, more efficiently, and more economically than by staff of the department; or
- (3) The required work cannot be undertaken and accomplished by the staff of the department in time to meet the established schedule for development of the project; or
- (4) An emergency situation exists which requires expedient action to alleviate or minimize a condition representing a danger or economic loss to the public; and
- (5) Such employment shall not be considered when other agencies of the state which have staff with the necessary expertise are available to accomplish the required work in a satisfactory manner on a schedule and at a cost suitable to meet the department's requirements.

*History Note: Filed as a Temporary Rule Eff. June 11, 1982,  
for a Period of 51 Days to Expire on August 1, 1982;  
Statutory Authority G.S. 136-28.1(f); 143B-350(f)(13) and (g);  
Eff. August 1, 1982;  
Amended Eff. October 1, 1991; April 1, 1986;  
February 1, 1983.*

### **.0702 SOLICITATION AND AWARD OF CONTRACT**

(a) The department shall establish and maintain a "Register of Firms" which have the necessary expertise and experience and have expressed a desire to perform for the department professional engineering or other kinds of professional or specialized services in connection with highway construction or repair. Prequalification pursuant to 19A NCAC 2D .0801 is not required for inclusion on the "Register" or award of a contract under this Section.

(b) Upon authorization to use a professional specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members who are experienced in the type of services to be contracted. For contracts anticipated to exceed ten thousand dollars (\$10,000) solicitation for proposals will be by published advertisement, except for supportive services contracts. In addition, solicitation for interest may also be by direct mail to several firms selected from the register. North Carolina firms qualified to do the required work shall be given priority consideration. A North Carolina firm is a firm which maintains an office in North Carolina which is permanently staffed and capable of performing a large portion of the work required.

(c) The firm(s) to be employed shall be selected for each project by the Selection Committee.

(d) For contracts having a total cost over ten thousand dollars (\$10,000) and for amendments thereto, award shall be made by the Board of Transportation after consultation with the Advisory Budget Commission.

(e) Contract amendments which increase a contract cost to ten thousand dollars (\$10,000) or more require approvals as specified in Paragraph (d).

(f) In an emergency situation, these Rules and Regulations may be waived by the State Highway Administrator pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted and a contract executed by the State Highway Administrator as required to resolve the emergency conditions.

(g) A noncollusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:

- (1) Transactions between a prime contractor and a person other than for a procurement contract for goods or services, regardless of type.
- (2) Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and U.S.C. 253(g) [currently twenty-five thousand dollars (\$25,000)] under a prime contract.
- (3) Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount under which that person will have a critical influence on or substantive control over the transaction. Such include, but are not limited to, bid estimators and contract managers.

The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 C.F.R. Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.

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*History Note: Filed as a Temporary Rule Eff. June 11, 1982, for a Period of 51 Days to Expire on August 1, 1982; Statutory Authority G.S. 136-28.1(f); 143B-350(f)(13) and (g); Eff. August 1, 1982; Amended Eff. October 1, 1991; April 1, 1986; February 1, 1983.*

### **SECTION .0800 - SOLICITATION OF CONTRIBUTIONS FOR RELIGIOUS PURPOSES AT REST AREAS**

#### **.0801 PERMIT TO SOLICIT CONTRIBUTIONS**

In recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public as well as the right of citizens to the free exercise of religion, all religious organizations and those non-profit charitable or educational organizations with a history of concern for the health and safety of the traveling public are hereby authorized to solicit contributions at North Carolina Highway rest areas, wayside parks, and visitor welcome centers in accordance with these Regulations. All other forms of solicitation by any other individuals or organizations are prohibited.

*History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. October 1, 1991; August 1, 1986.*

#### **.0802 PERMITS REQUIRED**

(a) All organizations desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.

(b) Written requests for permits for solicitation shall be sent to the appropriate Division Engineer of the Division of Highways in which the rest area or welcome center is located.

(c) Written requests must include all of the following:

- (I) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together with the applicant's tax exemption number;
- (2) a statement indicating the locations where the organization intends to solicit contributions;
- (3) the name and address of each individual authorized to solicit for the applicant;
- (4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed;
- (5) if the request for a permit is from a non-religious educational or charitable organization, a detailed written description of the organization's past efforts serving and promoting the safety of the traveling public.

(d) When all the appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the state highway administrator, or his duly authorized representative, and said permit will be effective for a period of 30 days from the date of issuance.

(e) Each permit issued shall describe the activity authorized, the area in which it may be conducted, and the period of time for which the permit is issued.

*History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. October 1, 1991; September 1, 1986; August 1, 1986; September 1, 1985.*

#### **.0803 SOLICITATION RESTRICTIONS AND REQUIREMENTS**

(a) Any member of an organization duly permitted under these Regulations actually engaged in soliciting for contributions must provide and prominently display an identification tag or badge containing all of the following information:

- (1) a photograph;
- (2) name;
- (3) organization; and
- (4) DOT permit number.

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- (b) While actually engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.
- (c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities only between the hours of 9:00 a.m. and 5:00 p.m. each calendar day except during holidays, when a different time is authorized in the permit.
- (d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.
- (e) The area of the rest area which may be used shall be clearly specified in the permit, and shall not impede visitors' access to rest facilities. At the same time, it should provide reasonable visibility of the soliciting group when feasible.
- (f) Individual solicitors may use incidental water and electric utility services at highway rest areas or visitor centers with connections at locations approved by the Division of Highways.
- (g) A permittee shall be limited to one individual solicitor actually engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.
- (h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.
- (i) Individual solicitors shall not harass persons by demanding, threatening or intimidating conduct.
- (j) While individual solicitors may solicit from the general public donations for printed matter, refreshments or religious paraphernalia, the individual solicitors must inform the person solicited if a minimum donation is required.
- (k) All distribution of refreshments, pamphlets and other materials and or transfers of money or funds solicited from a person acting pursuant to a permit issued by the State Highway Administrator or his duly authorized representative, shall take place in or at location specifically identified in the permit.
- (l) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.
- (m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.
- (n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.
- (o) No more than two organizations, one religious and one non-religious charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

*History Note: Statutory Authority G.S. 20-175; 136-18;  
Eff. November 1, 1984;  
Amended Eff. October 1, 1991; August 1, 1986;  
September 1, 1985.*

### **SECTION .0900 - DISTRIBUTION OF NEWSPAPERS FROM DISPENSERS AT REST AREAS AND WELCOME CENTERS**

#### **.0901 NEWSPAPER DISTRIBUTION POLICY**

The Department of Transportation, in recognition of the First Amendment right of freedom of speech which includes the right to distribute newspapers in certain public areas, and in recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public and the commercial vending authority of the Division of Services to the Blind, Department of Human Resources, has determined that all distribution of newspapers at rest areas and welcome centers on all of North Carolina's highways shall be in accordance with the following Rules. All other forms of newspaper distribution at rest areas and welcome centers are prohibited.

*History Note: Statutory Authority G.S. 111-41 et seq.; 136-18(9);  
Eff. October 1, 1991.*

#### **.0902 PERMITS REQUIRED**

- (a) A permit must be obtained from the Department of Transportation to distribute newspapers from newspaper dispensers at rest areas and welcome centers.
- (b) All permit requests must be in writing and must include the owner's name, address, telephone number and location of the newspaper dispenser, a plot plan showing the proposed location of the newspaper dispenser and a certification that such location is in conformity with this Section. The filing

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of a completed permit application will be considered a temporary permit pending the 30 day Department of Transportation review in Paragraph (c) of this Rule.

(c) Within 30 days of receipt of the permit application, the Department of Transportation will review the proposed location and, if it meets all requirements, issue a permit. If the application does not meet all requirements, the Department shall issue a notice of nonconformance and list the reasons the application does not conform to the Department Rules.

(d) The permit shall be valid until terminated or revoked for noncompliance with these Rules.

*History Note: Statutory Authority G.S. 136-18(9);  
Eff. October 1, 1991.*

### **.0903 INDEMNIFICATION**

(a) The owner of the news dispenser, upon the placement of a newspaper dispenser at a rest area or welcome center, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by negligence of State employees or agents, arising out of the installation, use or maintenance of any newspaper dispenser located on State highway rest areas or welcome centers, or where such suit, action or claims arise out of such installation, use or maintenance of any newspaper dispenser being a contributing omission, neglect or misconduct by the permittee, or its employees, agents, distributors or servants relating to the installation, use or maintenance of any newspaper dispenser within the State highway rest areas or welcome centers.

(b) The aforesaid indemnification provision shall be contained in each permit issued by the Department pursuant to this Section.

*History Note: Statutory Authority G.S. 136-18(9);  
Eff. October 1, 1991.*

### **.0904 LOCATION, INSTALLATION AND MAINTENANCE/NEWSPAPER DISPENSERS**

Any newspaper dispenser which in whole or in part rests upon, in or over rest areas or welcome centers shall comply with the following standard:

- (1) Newspaper dispensers shall not exceed five feet in height, 36 inches in width, or 30 inches in depth;
- (2) Newspaper dispensers may be chained or otherwise attached to one another; however, no more than three newspaper dispensers may be joined together in this manner, and a space of no less than 18 inches shall separate each group of three newspaper dispensers so attached.
- (3) No newspaper dispenser shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of a newspaper or periodical sold therein.
- (4) Every newspaper dispenser placed at a rest area or welcome center shall have affixed thereto in a place where such information may be easily seen, the name, address, and telephone number of the owner and person (if different from the owner) responsible for maintaining the news dispenser.
- (5) No newspaper dispenser shall be chained, bolted or otherwise attached to any public fixture located within the State highway right of way, including, but not limited to, official signs, sign supports, guide rails, traffic signal supports, highway lighting supports, controller boxes, fire hydrants or bus shelters.
- (6) Newspaper dispensers shall be securely place so as to reasonably prevent personal injury or property damage due to tilting, tipping or overturning.
- (7) Every newspaper dispenser shall be maintained so that:
  - (a) It is reasonably free of dirt and grease.
  - (b) It is reasonably free of chipped, faded, peeling and cracked paint.
  - (c) It is reasonably free of rust and corrosion; and
  - (d) The structural parts thereof are intact.
- (8) No newspaper dispenser shall be within five feet of a fire hydrant, fire call box, police call box or any other emergency facility.
- (9) No newspaper dispenser shall be placed in lobbies of rest areas or welcome centers or along the sidewalk on the approach to the rest area or welcome center building. Newspaper dispensers also are not allowed under the roof overhangs of these buildings.
- (10) No newspaper dispenser shall be placed in such a way that it impedes vehicular, pedestrian or handicapped person movements on drive and walkways, at telephones, trash receptacles, water fountains, to and from picnic areas or to and from rest area and welcome centers service buildings.

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- (11) No newspaper dispenser shall be placed along the curbs adjacent to parking areas. When a news dispenser is placed along a sidewalk it shall be placed parallel to and no more than six inches from the sidewalk edge farthest from the traffic curb.
- (12) Where vending facilities are in existence at rest areas or welcome centers, the newspaper dispensers shall be placed in close proximity to those buildings.
- (13) Where vending facilities are planned at a rest area or welcome center, the newspaper dispensers shall be placed near the planned location of the vending facility.

*History Note: Statutory Authority G.S. 136-18(9);  
Eff. October 1, 1991.*

### **.0905 CONDITIONS, NOTICE OF VIOLATIONS AND APPEALS**

(a) The continued placement, use and maintenance of newspaper dispensers is conditioned upon compliance with all the provisions of this Section. If any of the provisions of this Section are alleged to have been violated or if the location, installation, or condition of the newspaper dispenser no longer meets with the specifications of this Section the permittee shall be notified of the non-compliance by registered mail, return receipt requested.

(b) The notice shall state the specific provision(s) of this Section which are alleged to have been violated.

(c) The notice shall further state that, upon request by the permittee within 15 days of the receipt of said notice, the official issuing the notice of violation shall meet with the permittee to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within 30 days of said request. A request for such a meeting shall stay the further enforcement of this Section, except in emergency situations. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.

(d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the meeting referred to in Paragraph (c) of this Rule, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, or the permittee has failed to remove the newspaper dispenser or otherwise correct the violation or reason for non-compliance, the permit shall be revoked and the permittee shall be notified by registered mail that the permit has been revoked.

(e) The decision as provided for in Paragraph (d) of this Rule shall be in the final agency decision.

(f) If the permittee (or applicant where no permit has been issued) fails to appeal from the revocation of a permit or a decision not to grant a permit, and does not remove or have removed the newspaper dispenser in question within 30 days from the receipt of a revocation notice, the newspaper dispenser shall be removed by the Department of Transportation maintenance personnel and stored at a Department of Transportation maintenance yard. The permittee shall be notified by registered mail of the location of the newspaper dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the newspaper dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the newspaper dispenser.

*History Note: Statutory Authority G.S. 136-18(9);  
Eff. October 1, 1991.*

### **.0906 COMPLIANCE WITH DIV OF SERVICES FOR THE BLIND REQUIREMENTS**

Permittees must comply with the requirements of the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act [20 USC 107a(a)(5)].

*History Note: Statutory Authority G.S. 111-41 et seq.; 136-18(9);  
Eff. October 1, 1991.*

## **CHAPTER 3 - DIVISION OF MOTOR VEHICLES**

### **SUBCHAPTER 3A - ADMINISTRATION**

#### **SECTION .0100 - GENERAL ADMINISTRATION**

## **FINAL RULES**

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### **.0101 ORGANIZATION: COMMISSIONER OF MOTOR VEHICLES**

The current organization of the Division of Motor Vehicles consists of six operating sections: Driver License, Vehicle Registration, Enforcement Collision Reports/General Services, School Bus and Traffic Safety, and International Registration Plan (IRP). The administrative unit consists of the Commissioner, Deputy Commissioner, three Assistant Commissioners, and the Special Assistant to the Commissioner for Citizen Affairs.

*History Note: Statutory Authority G.S. 20-1; 20-3;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; February 1, 1982.*

### **SECTION .0200 - MOTOR CARRIERS OF MIGRATORY FARM WORKERS**

#### **.0201 DEFINITIONS**

#### **.0202 QUALIFICATIONS OF OPERATORS**

#### **.0203 DRIVING OF MOTOR VEHICLES**

#### **.0204 ACCESSORIES NECESSARY FOR SAFE OPERATION**

#### **.0205 HOURS OF SERVICE OF DRIVERS: MAXIMUM DRIVING TIME**

#### **.0206 INSPECTION AND MAINTENANCE OF MOTOR VEHICLES**

#### **.0207 LIGHTING EQUIPMENT**

#### **.0208 BRAKES**

#### **.0209 WARNING DEVICES**

#### **.0210 EMERGENCY EQUIPMENT: SUPPLIES: ETC.**

#### **.0211 EXHAUST SYSTEM**

#### **.0212 FIRST AID EQUIPMENT AND SUPPLIES**

#### **.0213 REAR VIEW MIRROR**

#### **.0214 STEERING MECHANISM**

#### **.0215 DIRECTIONAL SIGNALS**

#### **.0216 WINDSHIELD WIPER: WINDSHIELD: SIDE AND REAR GLASSES**

#### **.0217 PENALTIES: VIOLATION OF REGULATIONS A MISDEMEANOR**

#### **.0218 MOTOR VEHICLES TRANSPORTING MIGRATORY FARM WORKERS**

*History Note: Statutory Authority G.S. 20-1; 20-4.1; 20-7; 20-9; 20-10;*

*20-122.1; 20-124; 20-125.1; 20-127(a),(c); 20-129; 20-131;*

*20-154(b); 20-215.1; 20-215.2; 20-215.4; 20-215.5;*

*Eff. July 1, 1978;*

*Amended Eff. February 1, 1982;*

*Repealed Eff. November 1, 1991.*

### **SUBCHAPTER 3B - DRIVER LICENSE SECTION**

### **SECTION .0100 - GENERAL INFORMATION**

#### **.0103 FORMS**

The forms used by the driver license section of the Division of Motor Vehicles are on file in the commissioner's office and are available for review during normal working hours.

*History Note: Statutory Authority G.S. 20-7;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; June 5, 1981.*

#### **.0119 FEE FOR DRIVER IMPROVEMENT CLINIC**

A twenty-five (\$25.00) fee shall be charged to persons who are assigned and attend the driver improvement clinic. Payment must be made to a driver license representative prior to attending the first class. A certified check, money order or cash will be required, and a receipt for payment, in any form, will be issued. Personal checks will not be accepted.

*History Note: Statutory Authority G.S. 20-1; 20-16(c); 20-16(e);*

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*Eff. October 1, 1982;  
Amended Eff. November 1, 1991.*

### **SECTION .0300 - MEDICAL EVALUATION**

#### **.0301 ACUTE OR CHRONIC ILLNESSES**

(a) Certain illnesses such as uncontrolled epilepsy, diabetes, severe vision problems, certain forms of mental illness, alcoholism and others, may make driving unadvisable either temporarily or permanently. Drivers suffering from such an illness may be referred to the Division for evaluation by any one of the following:

- (1) driver license examiner,
- (2) driver license hearing officer,
- (3) driver education specialist,
- (4) law enforcement officers,
- (5) court officials,
- (6) physicians,
- (7) citizens.

(b) Reports of chronic illness will be evaluated by a Division of Health Services physician and may be reviewed by a panel of practicing physicians. The panel of physicians may recommend approval of the subject's driving privilege, approval with restrictions or disapproval. A driver receiving an unfavorable decision may appeal the decisions to the Medical Review Board.

*History Note: Statutory Authority G.S. 20-1; 20-9; 20-17.1;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; June 5, 1981.*

### **SECTION .0400 - RECORDS**

#### **.0403 DRIVING RECORDS**

(a) North Carolina G.S. 20-26(a) provides for copies of driver license records to be furnished, upon prepayment of the appropriate fee, to persons, firms or corporations for uses other than official. The record check will contain only public information concerning the subject of the driver license check. Collision reports are not public information and shall not be a part of the driver license record check. Information on a specific collision may be obtained from the Collision Reports/General Services Section of the Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697.

(b) Under North Carolina G.S. 58-248.8 and in accordance with the Fair Credit Reporting Act, a motor vehicle record check will be provided in connection with the underwriting of insurance or upon written authorization of the consumer. The motor vehicle record check will provide information as required by G.S. 20-26.

*History Note: Statutory Authority G.S. 20-1; 20-26(b),(c);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; July 1, 1982.*

### **SECTION .0600 - CLASSIFIED DRIVERS' LICENSE**

#### **.0601 GENERAL INFORMATION**

(a) Under G.S. 20-7(a), drivers' licenses shall be classified by weight and type of vehicle to be operated. Section 40, Chapter 667 of the 1979 session laws authorizes the commissioner to adopt regulations as may be necessary to carry out the provisions of the Classified Driver License Act, including the establishment of regulations defining "Gross Vehicle Weight."

(b) Where provisions of this Section .0600 (Classified Drivers' License) may be in conflict with the provisions of Section .0700 (Commercial Drivers' License) or those of 19A NCAC 3J (Rules and Regulations Governing the Licensing of Commercial Truck Driver Training Schools and Instructors), the provisions of Section .0700 and those of 19A NCAC 3J will prevail.

*History Note: Statutory Authority G.S. 20-7; S.L. 1979, c. 667, s. 40;  
Eff. June 5, 1981;  
Amended Eff. November 1, 1991.*

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**SUBCHAPTER 3C - VEHICLE REGISTRATION SECTION**

**SECTION .0100 - GENERAL INFORMATION**

**.0102 FORMS**

The forms used by Vehicle Registration to administer the functions described in Rule .0101 of this Subchapter are available from the Vehicle Registration Section of the Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697.

*History Note: Statutory Authority G.S. 20-1; 20-39; 20-41;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

**SECTION .0200 - REGISTRATION**

**.0202 TITLING AND REGISTRATION OF BRANDED VEHICLES**

Upon application for title and registration of a motor vehicle as defined in G.S. 20-4.01(33), the following regulations apply:

- (1) Flood vehicles will be branded "Water/Flood Damage Vehicle" on the title and "WATR-FLD" on the registration card.
- (2) Non-U.S.A. vehicles may be registered with the brand "Non-U.S.A." printed on the card, but will not be titled unless and until documentary proof is received from the applicant showing that the vehicle has been modified to meet United States safety and emission control standards. The title will then reflect the brand "Non-U.S.A. vehicle".
- (3) Reconstructed vehicles will be branded "RECONST" on the registration card and "Reconstructed vehicle" on the title. The application for title must be accompanied by the Inspector's report showing the vehicle was inspected prior to being rebuilt and was reinspected when completed, and the rebuilders affidavit detailing the repairs made including proof of ownership of the parts used. Salvage vehicles not inspected prior to being rebuilt will be branded "Reconstructed vehicle."
- (4) Salvage vehicles will be branded "SALVAGE" on the registration card and "Salvage vehicle" on the title. The application for title must be accompanied by the Inspector's report to show the vehicle is operable and requires no repairs.
- (5) Salvage rebuilt vehicles will be branded "SAL-RBLT" on the registration card and "Salvage Rebuilt vehicle" on the title. The application for title must be accompanied by the Inspector's report showing the vehicle was inspected prior to being rebuilt and reinspected when completed, and the rebuilders affidavit detailing the repairs made including proof of ownership of the parts. Failure to have the vehicle inspected prior to repair will result in the vehicle being branded a reconstructed vehicle.
- (6) Junk vehicles are marked "Junked" on the registration records only. The title must be submitted indicating the vehicle is incapable of operation or use upon the highways and has no resale value.

*History Note: Statutory Authority G.S. 20-1; 20-39; 20-71.3; 20-109.1;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; January 1, 1988.*

**.0224 PURCHASE INFORMATION**

The following purchase information is required for the title application:

- (1) The name and address of the person or firm from whom the vehicle was acquired;
- (2) The date of purchase and whether the vehicle is new or used;
- (3) Dealer's certificate number;
- (4) Whether the vehicle was acquired for use in North Carolina;
- (5) Purchase price, verified by bill of sale on new vehicle;
- (6) State of last registration;
- (7) Odometer reading and federal odometer statement; and
- (8) Ad valorem tax certification.

*History Note: Statutory Authority G.S. 20-1; 20-39; 20-52;  
Eff. March 1, 1982;*

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*Amended Eff. November 1, 1991.*

### **.0232 REGISTRATION INFORMATION AND CERTIFIED RECORDS FEES**

Verification of information from Division of Motor Vehicles records as to license numbers, ownership, or liability insurance requires a written request and fee of one dollar (\$1.00) per record. Certified copies of these records are provided for a fee of five dollars (\$5.00) per document.

*History Note: Statutory Authority G.S. 20-1; 20-39; 20-42;*

*Eff. March 1, 1982;*

*Amended Eff. November 1, 1991; December 1, 1984.*

### **.0236 PENALTY FOR FAILURE TO MAKE TRANSFER WITHIN 28 DAYS**

The following are exempted from the requirement to make application for title within 28 days of acquiring a vehicle (G.S. 20-74):

- (1) licensed dealers;
- (2) transfer upon inheritance;
- (3) transfer by operation of law where confirmation of the sale is required;
- (4) transfer by the court (such as bankruptcy and confiscation);
- (5) dealers or reposessors when applying for title in their name;
- (6) out of state dealers reassigning North Carolina titles to North Carolina purchasers.

*History Note: Statutory Authority G.S. 20-1; 20-39; 20-74;*

*Eff. March 1, 1982;*

*Amended Eff. November 1, 1991.*

## **SECTION .0300 - FINANCIAL RESPONSIBILITY**

### **.0303 TERMINATION NOTICES**

(a) North Carolina Notice of Termination Form FS-4 is used to notify the Commissioner of the Division of Motor Vehicles of termination of motor vehicle liability insurance. The form is supplied by the insurer and must include the name and address of the insured owner; year, make, and identification number of the vehicle for which the notification is made; termination date of policy; inception date of policy; date of preparation of the FS-4. Notices of termination of policies covering multiple listed vehicles require a Form FS-4. A schedule of vehicles on same policy may be attached to an FS-4.

(b) Insurers shall notify the Commissioner of the North Carolina Division of Motor Vehicles immediately upon the effective date of termination, cancellation, or deletion of a motor vehicle from a motor vehicle liability insurance policy. Provided, that notification to the commissioner is not necessary if a vehicle is deleted from a policy and replaced with another vehicle or is insured under a fleet policy by the same insurer. A fleet policy is defined as a policy with five or more vehicles which are not listed individually by year, make, model or identification number.

(1) The notification of cancellation, termination, or deletion of a vehicle from a policy shall be on a form approved by the Commissioner of the North Carolina Division of Motor Vehicles. The form shall be designated as a FS-4 and shall reflect the following:

- (A) name and address of insured;
- (B) name of insurance company and code number;
- (C) year, make and identification number of vehicle; multiple vehicles on same policy may be attached to one FS-4;
- (D) termination date;
- (E) inception date;
- (F) date prepared;
- (G) signature or a facsimile signature, which may be pre-printed or stamped, of authorized representative of insurance company;
- (H) color: red;
- (I) size: 7" width x 4 1/4" height; and
- (J) must be typed or computer generated.

(2) Insurers shall notify the Commissioner of the North Carolina Division of Motor Vehicles in the following instances:

- (A) If a termination of liability insurance (FS-4) was issued to the North Carolina Division of Motor Vehicles and the insured was reinstated or renewed, the insurer must immediately inform

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the Division with an FS-1 certificate of insurance, provided such reinstatement or renewal has occurred without any lapse in coverage. An agent representing an insurance company may issue the notification if authorized to do so by the company.

- (B) An agent representing an insurance company may issue notification if authorized to do so by the company. FS-1's should be issued upon request from the insured, Division of Motor Vehicles, or to reinstate with no lapse in coverage.
- (C) When an insurance company terminates a policy for whatever reason and issues another policy, without a lapse, no FS-4 is necessary. The insurance company shall issue a FS-1 showing continuous coverage.
- (3) The certificate of insurance notice shall be on a form approved by the Commissioner of the North Carolina Division of Motor Vehicles. The form shall be designated as a FS-1 and shall reflect the following:
  - (A) name and address of insured;
  - (B) name of insurance company and code number;
  - (C) year, make and identification number of vehicle; multiple vehicles on same policy may be attached to a FS-1;
  - (D) policy number;
  - (E) policy effective date;
  - (F) date prepared;
  - (G) signature or facsimile signature of authorized representative; may be pre-printed or stamped;
  - (H) color: purple/red;
  - (I) size: 7" width x 4 1/4" height; and
  - (J) must be typed or computer generated.
- (4) Insurers may arrange with the Division of Motor Vehicles for notices to be submitted through exchange of electronic data media. If this procedure of reporting is selected, Division of Motor Vehicles will not have available a hard copy of submitted notices.

*History Note: Statutory Authority G.S. 20-39; 20-279.2; 20-279.22; 20-279.29; 20-309; 20-316; 20-316.1;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; October 1, 1984;  
February 1, 1982.*

### **.0304 VERIFICATION OF CERTIFICATION**

- (a) Turn-around forms requesting verification will be addressed to insurers by the Division of Motor Vehicles.
- (b) Insurers are required to respond to requests for certification within 15 days after receipt by the insurer.
- (c) The form completed by the Division of Motor Vehicles must contain:
  - (1) vehicle owner's name and address;
  - (2) vehicle make, model and vehicle identification number;
  - (3) date certification was made by the registrant; and
  - (4) date certification request was prepared by the Division of Motor Vehicles.
- (d) Data to be furnished by the insurer must include at least one of the following:
  - (1) the vehicle is currently insured against liability;
  - (2) the vehicle is not currently insured, but was insured at the time of certification; or
  - (3) no record of any liability insurance is available for the vehicle described.

*History Note: Statutory Authority G.S. 20-39; 20-279.2; 20-316.1;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; February 1, 1982.*

## **SECTION .0400 - MOTOR VEHICLES OPERATED FOR-HIRE**

### **.0417 SALES TAX**

*History Note: Statutory Authority G.S. 20-39; 105-164.4; 105-164.6;*

*Eff. March 1, 1982;*

*Amended Eff. October 1, 1984;*

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*Repealed Eff. November 1, 1991.*

### **.0427 PERSONALIZED PLATES**

The following regulations are in addition to the law as set forth in G.S. 20-81.3:

- (1) Personalized plates will transfer from one vehicle to another if the vehicles have the same owner.
- (2) The twenty dollars (\$20.00) paid for a special plate cannot be refunded after the order for the plate's manufacture has been given.

*History Note: Statutory Authority G.S. 20-39; 20-81.3;  
Eff. March 1, 1982;  
Amended Eff. November 1, 1991.*

### **.0436 HIGHWAY USE TAX**

- (a) Highway Use Tax is collected on all sales of new and used motor vehicles at the time application for title is made.
- (b) Vehicles purchased from a dealer are taxed on the sales price less any trade credit.
- (c) Used vehicles are taxed on the DMV computer value which does not exceed wholesale value.
- (d) Mobile homes are not subject to Highway Use Tax.

*History Note: Statutory Authority G.S. 105-187.1 through 20-187.10;  
Eff. November 1, 1991.*

## **SECTION .0600 - INTERNATIONAL REGISTRATION PLAN**

### **.0601 GENERAL INFORMATION**

*History Note: Statutory Authority G.S. 20-86.1; 20-91;  
Eff. March 1, 1982;  
Repealed Eff. November 1, 1991.*

### **.0602 OBTAINING I.R.P. MANUAL AND SCHEDULE FORMS**

*History Note: Statutory Authority G.S. 20-86.1; 20-91;  
Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.*

### **.0603 REGISTRATION UNDER THE INTERNATIONAL REGISTRATION PLAN**

*History Note: Statutory Authority G.S. 20-86.1; 20-91;  
Eff. March 1, 1982;  
Repealed Eff. November 1, 1991.*

## **SUBCHAPTER 3D - ENFORCEMENT SECTION**

### **SECTION .0600 - WEIGHT OF VEHICLE AND REGISTRATION ENFORCEMENT**

#### **.0603 WEIGHING VEHICLES WITH PORTABLE SCALES**

*History Note: Statutory Authority G.S. 20-1; 20-118.1;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1985; February 1, 1982; April 11, 1980;  
Repealed Eff. November 1, 1991.*

## **SECTION .0700 - APPROVAL OF MOTOR VEHICLE SAFETY EQUIPMENT**

### **.0701 VEHICLE EQUIPMENT APPROVAL**

- (a) The Enforcement Section is responsible for issuing certificates of approval for all motor vehicle safety equipment that requires the approval of the Commissioner of Motor Vehicles.

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(b) Anyone wishing to know if an item requires the commissioner's approval may contact this office for the information.

(c) If the equipment requires the commissioner's approval, and an individual wishes to know if a particular brand name item is approved, he may also contact this office for a listing of approved manufacturers of this piece of safety equipment.

*History Note: Statutory Authority G.S. 20-1; 20-124(f),(h); 20-125(a) through (c); 20-125.1(a),(b); 20-126(a) through (c); 20-127(b); 20-129(a) through (d),(f),(g); 20-129.1(7),(8); 20-130(a); 20-131(a) through (d); 20-135(c); 20-135.1(a); 20-135.2(a),(b); 20-135.3; 20-137.1(a); Eff. February 1, 1982; Amended Eff. November 1, 1991; August 1, 1982.*

### **.0702 INFORMATION FOR MANUFACTURER**

A manufacturer of safety equipment requiring approval should contact the American Association of Motor Vehicle Administrators, 4200 Wilson Boulevard, Suite 600, Arlington, Virginia 22203, for approval procedures. Additional information on motor vehicle safety equipment may be obtained from the Enforcement Section or the Commissioner of Motor Vehicles' office during normal office hours.

*History Note: Statutory Authority G.S. 20-1; 20-124(f),(h); 20-125(a) through (c); 20-125.1(a),(b); 20-126(a) through (c); 20-127(b); 20-129(a) through (d),(f),(g); 20-129.1(7),(8); 20-130(a); 20-131(a) through (d); 20-135(c); 20-135.1(a); 20-135.2(a); 20-135.3; Eff. February 1, 1982; Amended Eff. November 1, 1991.*

### **.0703 REQUIRED LIGHTING EQUIPMENT FOR HOUSE TRAILERS**

Every house trailer, mobile home, modular home, or structural component thereof shall be required to have certain rear lighting equipment while the vehicle is in intrastate transit. The lighting equipment may be attached by means of a harness removable upon completion of transit. Information on the required lighting equipment may be obtained from the Enforcement Section, and is on file in the Commissioner of Motor Vehicles' office for inspection and review.

*History Note: Statutory Authority G.S. 20-1; 20-129.2; Eff. February 1, 1982; Amended Eff. November 1, 1991.*

## **SECTION .0800 - SAFETY RULES AND REGULATIONS**

### **.0801 SAFETY OF OPERATION AND EQUIPMENT**

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-190. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver will be determined by his previous seven days of operation.

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- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina will be exempt from provisions of Part 391.11(b)(1) and Part 391.41(b)(1) through (11) and therefore will be authorized for intrastate operation if licensed prior to March 30, 1992, are approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles and meet all other requirements of this Section. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.
- (c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:
- (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
  - (2) It is being used to transport either:
    - (A) agricultural products, or
    - (B) farm machinery, farm supplies, or both, to and from a farm;
  - (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
  - (4) It is not being used in the operation of a for-hire motor carrier; and
  - (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.

*History Note: Statutory Authority G.S. 20-384;  
Eff. December 1, 1983;  
Amended Eff. November 1, 1991; October 1, 1991;  
June 1, 1991; November 1, 1990.*

### **.0804 PURCHASE OF FOR HIRE LICENSE TAGS**

- (a) A certificate of exemption for the transportation of property issued as provided in Rule .0803 constitutes approval by the Division of the purchase of for hire tags for vehicles owned by and registered in the name of the party to whom such certificate of exemption is issued. The certificate of exemption must be presented to the Division of Motor Vehicles or its authorized agents when purchasing for hire tags.
- (b) A certificate of exemption for the transportation of passengers issued as provided in Rule .0803 does not in itself constitute approval by the Division of the purchase of for hire tags for vehicles owned by the person to whom such certificate is issued. For hire tags may only be purchased by holders of exemption certificates for the transportation of passengers who are in full compliance with the insurance and safety rules of the Division. Vehicles of such carriers must be registered with the Division as required by Rule .0809 and upon carrier's compliance with said insurance and safety rules and regulations, said vehicles will be approved by the Division of Motor Vehicles so that tags may be purchased, but not before.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a  
Period of 120 Days to Expire on June 11, 1986;  
Statutory Authority G.S. 20-378;  
Eff. April 1, 1986;  
Amended Eff. November 1, 1991.*

### **.0808 REGULATION CARRIERS: USE OF RENTED OR LEASED VEHICLES**

- (a) No carrier authorized to operate as a common carrier of property or as a contract carrier of property by the Utilities Commission shall use any vehicle of which such carrier is not the owner for the transportation of property for compensation, except under a bona fide written lease from the owner, subject to the following conditions:
- (1) The lessee shall use such vehicles only for purposes and within the territory covered by his operating authority and for the term of the lease.

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- (2) The property transported shall be transported in the name of and under the responsibility of the said lessee, and under the direct supervision and control of the lessee.
- (3) The drivers of said leased equipment shall be directly supervised and controlled by lessee.
- (4) The name, address and certificate or permit number assigned to the lessee shall be displayed on the leased vehicle as required by the Utilities Commission.
- (5) The vehicle shall be covered by insurance in the name of the lessee as required by the Utilities Commission.
- (6) The lease shall specify a definite effective period, the amount of consideration to the lessor, and shall list and describe the equipment covered.
- (7) A legible copy of the executed lease shall be carried in the leased vehicle at all times, unless a certificate as provided in Paragraph (a)(8) of this Rule is carried in lieu thereof.
- (8) Unless a copy of the lease is carried on the equipment as provided in Paragraph (a)(7) of this Rule, the authorized carrier shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, the period thereof, any restrictions therein relative to the commodities to be transported, and the location of the premises where the original of the lease is kept by the authorized carrier, which certificate shall be carried with the equipment at all times during the entire period of the lease.

Exception: The provisions of this Rule shall not apply to the interchange of trailers.

(b) No common or contract carrier of property shall lease its equipment for private use in the transportation of commodities which it is authorized to transport by authority of the Utilities Commission, and no common or contract carrier of property shall lease equipment with drivers to private carriers or shippers under any circumstance.

(c) The rules and regulations relating to lease and interchange of vehicles, as prescribed in the Code of Federal Regulations, Title 49 - Transportation, Chapter X - Interstate Commerce Commission, Sub-Chapter A - General Rules and Regulations, Part 1057 - Lease and Interchange of Vehicles, to the extent that said regulations are not in conflict with the North Carolina Statutes, shall apply to all motor carriers of property authorized by the North Carolina Utilities Commission to operate in North Carolina.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986;  
Statutory Authority G.S. 20-378;  
Eff. April 1, 1986;  
Amended Eff. November 1, 1991.*

### **.0809 BEGINNING OPERATIONS FOR THE TRANSPORTATION OF PASSENGERS**

(a) An order of the Utilities Commission, approving an application, or the issuance of a certificate or a permit, or a certificate of exemption issued by the Division for the transportation of passengers, does not within itself authorize the carrier to begin operations. Operations are unlawful until the carrier shall have complied with the law by:

- (1) Registration of its rolling equipment with the Division on Form MC-19.
- (2) Filing insurance with the Division covering its rolling equipment or by providing other security for the protection of the public, as provided by the Utilities Commission.
- (3) In the case of common and contract carriers, filing tariffs and schedules or rates and charges with the Utilities Commission to be made for the transportation service authorized, as provided by the Utilities Commission.

(b) Unless a common or contract carrier complies with the foregoing requirements and begins operating, as authorized, within a period of 30 days after the commission's order approving the application becomes final, and unless the time is extended in writing by the Utilities Commission upon written request, the operating rights therein granted will cease and determine.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986;  
Statutory Authority G.S. 20-378;  
Eff. April 1, 1986;  
Amended Eff. November 1, 1991.*

### **.0815 EVIDENCE OF LIABILITY SECURITY**

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(a) All such interstate motor carriers shall keep in force at all times public liability and property damage insurance in amounts not less than the minimum limits prescribed by the U.S. Department of Transportation or Interstate Commerce Commission. The policy shall have attached thereto an endorsement in the form set forth in Form F and as evidence of such insurance, there shall be filed with the Division a certificate in the form set forth in Form E of these Rules.

(b) Notice of cancellation of insurance shall be given to the Division by the insurer in the form of notice set forth in Form K.

(c) Such motor carriers who have been permitted to post bond in lieu of insurance or who have qualified as self-insurers, under the rules and regulations of the Interstate Commerce Commission, shall not engage in interstate commerce within the borders of this state unless and until such carriers have filed surety bonds which have been accepted by the Division in the form set forth in Form G or a true and legible copy of the currently effective ICC order authorizing such motor carrier to self-insure under the provisions of the Interstate Commerce Act. Notice of cancellation of surety bonds shall be given to the Division in the form of notice set forth in Form L.

(d) No such policy or bond shall be acceptable unless issued by an admitted company or a surplus lines company as permitted in G.S. 58-420 et. seq. Provided, if the motor carrier is not registered in this state and the insurance company or surety company is a non-admitted company, the company shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon the policy or bond arising out of an accident involving the motor carrier in this state. Further, the company must be qualified in the state where the motor carrier is registered.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986; Statutory Authority G.S. 20-378; Eff. April 1, 1986; Amended Eff. November 1, 1991.*

**.0817 DESIGNATION OF PROCESS AGENT**

No such carrier shall engage in interstate commerce within the borders of the State of North Carolina unless and until there shall have been filed with and accepted by the Division a currently effective designation of a local agent for service of process. Such carrier shall file such designation by showing the name and address of such agent on the uniform application for registration of interstate operating authority as set forth in Form A available from the Motor Carrier Regulatory Unit or by furnishing the Division with a true copy of the designation of such agent filed with the Interstate Commerce Commission.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986; Statutory Authority G.S. 20-378; Eff. April 1, 1986; Amended Eff. November 1, 1991.*

**.0823 VEHICLE REGISTRATION AND IDENTIFICATION REQUIRED**

(a) A motor carrier shall not operate a vehicle or engage in driveaway operations within the borders of the state unless and until the vehicle or driveaway operation shall have been registered and identified with the Division in accordance with these Paragraphs and there shall have been a compliance with all other requirements of these Rules.

(b) On or before the thirty-first of January of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the Division for the issuance of an identification stamp or stamps, for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of this state during the ensuing year. The motor carrier may apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefore arises or is anticipated.

(c) If the Division determines that the motor carrier has complied with all applicable provisions of these Rules, the Division shall issue to the motor carrier the number of identification stamps requested.

(d) An identification stamp issued or assigned under the provisions of this Section shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or con-

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ducted by a motor carrier, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the provisions of this Section shall not knowingly permit the use of same by any other person or organization.

(e) On or before the thirty-first day of January of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the National Association of Regulatory Utility Commissioners for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of the state during the ensuing year.

(f) The NARUC shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this Section shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of the state during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of the state in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation and, in the case of a vehicle leased by the motor carrier, such expiration date shall not exceed the expiration date of the lease. The appropriate expiration date shall be entered in the space provided below the certificate. Such expiration date shall be within a period of 15 months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof.

(g) The registration and identification of a vehicle or driveaway operations under the provisions of this Section and the identification stamp evidencing the same and the cab card prepared therefore shall become void on the first day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

(h) The application for the issuance of such identification stamps shall be in the form set forth in Form B-1 which is available from the Motor Carrier Regulatory Unit. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8 and 1/2 inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by a filing fee in the amount of one dollar (\$1.00) for each identification stamp applied for. Applications for annual reregistration of such motor vehicles shall be accompanied by a filing fee in the amount of one dollar (\$1.00) for each identification stamp applied for. Provided, that vehicles of such carriers domiciled in another jurisdiction which extends reciprocity to vehicles of carriers domiciled in North Carolina, pursuant to the general reciprocal agreements heretofore or hereafter entered into with the North Carolina Commissioner of Motor Vehicles under Article 1A of Chapter 20 of the General Statutes, shall be exempt from the payment of registration fees required in this Paragraph to the same extent as such jurisdiction exempts vehicles of carriers domiciled in North Carolina from annual interstate public utilities vehicle registration fees similar to the fee required in this Paragraph.

(i) The application for the issuance of such cab cards shall be duly executed by an official of the motor carrier.

(j) The identification stamp issued under the provisions of this Section by the Division shall bear its name or symbol and such other distinctive markings or information, if any, as the Division deems appropriate. In addition, such stamp shall bear an expiration date of the first day of February in the succeeding calendar year. The stamp shall be in the shape of a square and shall not exceed one inch in diameter.

(k) The cab card referred to in Paragraphs (a) through (j) of this Rule shall be in the form set forth in Form D-1 which is available from NARUC, and shall bear the seal of the NARUC. The cab card shall be printed on a rectangular card 11 inches in height and 8 and 1/2 inches in width.

(l) In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated by the carrier identified in the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.

(m) In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motor power for the driveaway operation whenever such an operation is conducted by the carrier identified in the cab card.

(n) A cab card shall, upon demand, be presented by the driver to any authorized agent or representative of the North Carolina Division of Motor Vehicles.

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- (1) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to Subparagraph (2) of this Paragraph.
- (2) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: Provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier, or results from destruction or loss of a vehicle operated by such carrier under lease of 30 consecutive days' duration or more, and such carrier provides a newly acquired vehicle in substitution therefore within 30 days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:
  - (A) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;
  - (B) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicles; and
  - (C) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle.
- (3) Any erasure, improper alteration, or unauthorized use of a cab card shall render it void.
- (4) If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be prepared and new identification stamps may be issued therefore upon application by the motor carrier and upon payment of the fee prescribed. See G.S. 20-385.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986;  
Statutory Authority G.S. 20-378;  
Eff. April 1, 1986;  
Amended Eff. November 1, 1991.*

### **.0824 EVIDENCE OF LIABILITY SECURITY**

- (a) All such interstate exempt motor carriers shall keep in force at all times public liability and property damage insurance in amounts not less than the minimum limits prescribed by the United States Department of Transportation or the Interstate Commerce Commission. The policy shall have attached thereto an endorsement in the form set forth in Form F and as evidence of such insurance, there shall be filed with the Division a certificate in the form set forth in Form E.
- (b) Notice of cancellation of insurance shall be given to the Division by the insurer in the form of notice set forth in Form K.
- (c) Such motor carriers who elect to post bond in lieu of insurance must do so in the form set forth in Form G. Notice of cancellation of surety bond shall be given to the Division in the form of notice set forth in Form L.
- (d) No such policy or bond shall be acceptable unless issued by an admitted company or a surplus lines company as permitted in G.S. 58-420 et. seq. Provided, if the motor carrier is not registered in this state and the insurance company or surety company is a non-admitted company, the company shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon the policy or bond arising out of an accident involving the motor carrier in this state. Further, the company must be qualified in the state where the motor carrier is registered.

*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986;  
Statutory Authority G.S. 20-378;  
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### **.0827 INVESTIGATION OF MOTOR CARRIER ACCIDENTS**

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*History Note: Filed as a Temporary Rule Eff. February 11, 1986 for a Period of 120 Days to Expire on June 11, 1986; Statutory Authority G.S. 20-378; Eff. April 1, 1986; Repealed Eff. November 1, 1991.*

### **SUBCHAPTER 3E - INTERNATIONAL REGISTRATION PLAN (IRP) SECTION**

#### **SECTION .0300 - REGISTRATION OF RENTAL VEHICLES BY NONRESIDENTS**

##### **.0302 ONE-WAY TRUCK REGISTRATION**

- (a) In addition to the General Statutes concerning truck registration, every applicant shall assign a unit number to each motor vehicle owned or operated.
- (b) The minimum number of vehicles to be licensed in North Carolina shall be determined as follows:
- (1) Divide the North Carolina miles by the total miles traveled (all jurisdictions) by each class of motor vehicles during the preceding year. The preceding year means the period of 12 consecutive months immediately prior to July 1st of each year immediately preceding the commencement of the registration or license year for which the application is being filed.
  - (2) Multiply the North Carolina percent times the total number of vehicles owned or operated January 1st in the particular class.
  - (3) When equipment is added to a particular class after January 1st of any licensing year, the same percent used at the beginning of that licensing year (January 1st) shall be used to determine the portion of the new vehicles to be registered in North Carolina.
  - (4) A record of unit number, identification, declared gross weight, miles traveled, monthly inventory (motor vehicle) records, North Carolina license number and date license purchased shall be retained for three years.
- (c) The appropriate forms for this Section are on file for review or may be obtained from the International Registration Plan (IRP) Section of the Division of Motor Vehicles, Raleigh, North Carolina.

*History Note: Statutory Authority G.S. 20-1; 20-84.2; Eff. July 1, 1978; Amended Eff. November 1, 1991; July 1, 1983; February 1, 1982.*

##### **.0303 UTILITY TRAILER REGISTRATION**

- (a) The minimum number of utility trailers to be licensed in North Carolina shall be determined as follows:
- (1) Divide each month, January thru December, for 5-year license plate renewal or each month of 12 consecutive months determined in accordance with North Carolina's staggered registration program for annual license plate renewal the number of trailers in North Carolina, which are not on one-way rentals, by the total number of trailers in all jurisdictions, which are not on one-way rental.
  - (2) Multiply monthly, January thru December, or the 12-month designated period, the North Carolina percent times the total number of trailers owned (entire fleet) whether rented or not rented.
  - (3) Add the twelve resulting monthly figures and divide the total by 12.
  - (4) Register in North Carolina no less than the number of trailers equal to the average number of utility trailers rented and available for rent in North Carolina during the preceding registration or license year. The monthly inventory records, number of licenses purchased in North Carolina each year and records of payments shall be retained for three years.
- (b) The appropriate forms for this Section are on file for review or may be obtained from the International Registration Plan (IRP) Section of the Division of Motor Vehicles, Raleigh, North Carolina.

*History Note: Statutory Authority G.S. 20-1; 20-66; 20-86.1; Eff. July 1, 1978; Amended Eff. November 1, 1991; July 1, 1983; February 1, 1982.*

##### **.0304 U-DRIVE-IT CAR REGISTRATION**

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- (a) The minimum number of vehicles to be licensed in North Carolina at the beginning of each registration year (determined by staggered registration) shall be determined as follows:
- (1) Divide gross revenue earned in North Carolina by gross revenue earned in all jurisdictions during the preceding accounting year. The preceding accounting year means the 12 consecutive months January 1 thru December 31 (or as otherwise approved by the Commissioner), immediately preceding the registration year for which the application is filed.
  - (2) Multiply the North Carolina percent times the total number of passenger cars (u-drive-it) owned or operated as of the first day of the month of the registration year (determined by the staggered registration system).
  - (3) When equipment is added to the fleet after the original application is filed for any registration year, the same percent used at the beginning of that registration year shall be used to determine the number of passenger cars (u-drive-it) subject to registration in North Carolina during that particular month and each month thereafter through that registration year.
  - (4) A record of gross revenue earned in each jurisdiction, a record of licenses purchased and dates (day, month and year) shall be maintained for three years.
- (b) The appropriate forms for this Section are on file for review or may be obtained from the International Registration Plan (IRP) Section of the Division of Motor Vehicles, Raleigh, North Carolina.

*History Note: Statutory Authority G.S. 20-1; 20-66; 20-86.1;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; July 1, 1983;*

*February 1, 1982.*

## **SECTION .0400 - INTERNATIONAL REGISTRATION PLAN**

### **0401 GENERAL INFORMATION**

- (a) Vehicles used or intended for use in two or more jurisdictions that allocate or proportionally register vehicles for the transportation of persons or property, unless excepted by this Section, are required to be registered in accordance with the provisions of the International Registration Plan. "Apportionable vehicle" as used in this Section means any vehicles, except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used, or intended for use, in two or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property and:
- (1) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds; or
  - (2) is a power unit having three or more axles regardless of weight; or
  - (3) is used in combination when the weight of such combination exceeds 26,000 pounds gross vehicle weight.
- (b) Vehicles, or combinations thereof, having a gross vehicles weight of 26,000 pounds or less and two-axle vehicles and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant.
- (c) The Raleigh and Charlotte Offices of the North Carolina Division of Motor Vehicles are responsible for registering vehicles under the International Registration Plan. Registrants or other interested persons may obtain the International Registration Plan manual and the application schedule forms from:
- (1) North Carolina Division of Motor Vehicles  
I.R.P. Section  
1100 New Bern Avenue  
Raleigh, North Carolina 27697; or
  - (2) North Carolina Division of Motor Vehicles  
I.R.P. Unit  
6016 Brookshire Blvd.  
Charlotte, North Carolina 28216.
- (d) The principles for implementation of this registration reciprocity agreement among states of the United States and provinces of Canada are found in the most recent publication of the International Registration Plan Policies and Procedures Manual, the Uniform Operation Audit Procedures Guidelines and the North Carolina Department of Transportation, Division of Motor Vehicles International Registration Plan Manual.

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*History Note: Statutory Authority G.S. 20-86.1; 20-91;  
Eff. July 1, 1983;  
Amended Eff. November 1, 1991.*

### **.0402 REGISTRATION UNDER THE INTERNATIONAL REGISTRATION PLAN**

*History Note: Statutory Authority G.S. 20-86.1;  
Eff. July 1, 1983;  
Repealed Eff. November 1, 1991.*

### **.0403 LICENSE PERIOD FOR TRAILER PLATE**

(a) G.S. 20-666 established the expiration date for both annual and staggered registration plates. Under an agreement with the Division, trailer plates may be issued for a period of up to five years with the following conditions:

- (1) Payment is made for the first year's fees;
- (2) A certificate of deposit, approved by the Commissioner, in an amount equal to the fees for the remainder of the issuance period, shall be filed with the Division;
- (3) Payment for each additional year is made during the normal renewal period. The certificate of deposit may be reissued each year in an amount equal to the fees for the years remaining on the agreement.

(b) Copies of the trailer registration plate agreement are available from the International Registration Plan Section, Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697.

*History Note: Statutory Authority G.S. 20-39; 20-63; 20-87(9); 20-88;  
Eff. November 1, 1991.*

## **SUBCHAPTER 3F - COLLISION REPORTS/GENERAL SERVICES SECTION**

### **SECTION .0100 - GENERAL INFORMATION**

#### **.0101 PURPOSE**

This Subchapter explains the accident reporting process and establishes rules for the publication of statistics developed from accident reports.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-166.1; 20-279.1 through 20-279.39;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

#### **.0102 FORMS**

*History Note: Statutory Authority G.S. 20-1; 20-3;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.*

### **SECTION .0200 - STATISTICAL DATA ASSEMBLED AND PUBLISHED**

#### **.0201 TRAFFIC ACCIDENT SUMMARY**

(a) The Collision Reports General Services Section publishes a summary of motor vehicle traffic accidents monthly and annually. This publication contains information on all types of motor vehicles, pedestrian and bicycle accidents. The accidents are categorized by:

- (1) county,
- (2) rural or urban,
- (3) time of day,
- (4) day of week,
- (5) drivers by age and sex.

(b) The summary is provided to federal and state agencies, officers of the court, the Division of Highways, research institutes and libraries. It is also available to the general public upon request.

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*History Note: Statutory Authority G.S. 20-1; 20-166.1; 20-3;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0202 FATAL ACCIDENT REPORTS**

The Collision Reports General Services Section publishes monthly a report on the number of fatal accidents and the number of persons killed in these accidents. Comparisons are made with information from the prior year. This report is furnished to officers of the court, the Highway Patrol and the news media.

*History Note: Statutory Authority G.S. 20-1; 20-166.1; 20-3;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0203 SPECIAL HOLIDAY REPORT**

Special holiday reports giving information on prior year fatalities, injuries, accidents and driver violations are published by the Collision Reports General Services Section. These reports are provided to the National Safety Council and the Highway Patrol and are used by the news media to project accidents over a holiday period.

*History Note: Statutory Authority G.S. 20-1; 20-166.1; 20-3;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

## **SECTION .0300 - ADMINISTRATIVE SUPPORT OF HIGHWAY PATROL**

### **.0301 HIGHWAY PATROL ACTIVITY REPORTS**

*History Note: Statutory Authority G.S. 20-1; 20-3;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.*

## **SECTION .0600 - SAFETY AND FINANCIAL RESPONSIBILITY**

### **.0601 PROOF OF FINANCIAL RESPONSIBILITY**

(a) The Division of Motor Vehicles will furnish to vehicle owners and or operators appropriate forms to facilitate compliance with Article 9A, Chapter 20 of the Motor Vehicle Safety and Financial Responsibility Act of 1953.

(b) Vehicle owners and or operators of automobiles involved in an accident may furnish required proof of financial responsibility on documents prescribed by the Division.

*History Note: Statutory Authority G.S. 20-279.1 through 20-279.39;  
Eff. November 1, 1991.*

### **.0602 ADMINISTRATIVE FINANCIAL RESPONSIBILITY HEARINGS**

(a) Any person who has received notice of a driver's license suspension due to an automobile accident for failure to file proof of financial responsibility may request a hearing.

(b) Request for a hearing must be made in writing to the Division within 15 days from the date shown on the proposed suspension order.

(c) The receipt of such request will stay the effective date of the suspension order for 30 days or until the hearing is held.

(d) The petitioner must furnish the Division with a brief statement of the circumstances of the accident in which he or his vehicle was involved, grounds relied upon to exonerate him from suspension, and a certified copy of any traffic court judgment related to the accident. This information must be received at the Division at least five days prior to the date fixed for hearing.

(e) Due process will be satisfied by an inquiry limited to the determination of whether there is a reasonable possibility of a judgment being rendered against the petitioner should he be sued in a civil

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action and lose his case. The burden of proof is on the petitioner to demonstrate to the hearings officer that there is no reasonable possibility that a judgment would be rendered against him in a court of law.

(f) If the hearings officer establishes that liability insurance was in effect on the date of the accident, or that the petitioner has assumed financial responsibility for the damages in the accident, the officer will rescind the Division's prior notice of revocation.

*History Note: Statutory Authority G.S. 20-279.2; 20-279.4; 20-279.5;  
Eff. November 1, 1991.*

### **SUBCHAPTER 3G - SCHOOL BUS AND TRAFFIC SAFETY SECTION**

#### **SECTION .0100 - GENERAL INFORMATION**

##### **.0101 PURPOSE**

This Section deals with various driver education programs designed to improve driving skills and promote traffic safety. Rules for commercial driver training schools and school bus driver certification are also established. The following publications are available from the School Bus and Traffic Safety Section of the Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, N. C. 27697:

- (1) Rules and Regulations Governing the Licensing of Commercial Driver Training Schools;
- (2) Rules and Regulations Governing the Issuance and Cancellation of School Bus Driver Certificates;
- (3) Schedule of Driver Improvement Clinics.

*History Note: Statutory Authority G.S. 20-1; 20-3; 20-7(l-1) and (m);  
20-16(c); 20-88.1; 20-218; 20-320 through 20-328;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

#### **SECTION .0300 - RESTRICTED INSTRUCTION PERMIT**

##### **.0301 DRIVER EDUCATION PERMIT**

(a) North Carolina G.S. 20-7(l-1) and (m) provide for issuance of a restricted instruction permit to persons enrolled in high school driver education courses, commercial driver training schools, and community colleges and technical institutes. All of these schools must be approved by the State Superintendent of Public Instruction.

(b) The student's vision and physical condition are checked and recorded on the permit. A driver education specialist issues this permit to qualified students, when requested to do so by the school.

*History Note: Statutory Authority G.S. 20-1; 20-7(l-1) and (m); 20-88.1;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

#### **SECTION .0400 - DRIVER IMPROVEMENT CLINICS**

##### **.0401 CLINICS**

(a) The School Bus and Traffic Safety Section operates driver improvement clinics in various locations across the state to provide assistance to drivers who have had difficulties concerning their driver's license. The most frequent difficulties are the accumulation of points against their driving records or having had their license suspended for traffic violations. While the hearing officers of the Driver License Section and traffic courts are the primary source of providing enrollees to the clinic, the clinics are open to volunteer drivers for self-improvement purposes.

(b) Rules of the road, driver license laws, and safe driving practices are taught by lectures and discussions. Extensive use is made of selected films, visual aids, and a student workbook.

(c) Successful completion is determined by the instructor upon the basis of the enrollee's cooperation in completing all assigned work and classroom behavior. After completion, notification is made to the assigning agency so proper credit may be given to the applicant.

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(d) Drivers accumulating seven or more points or four points in a three-year period following reinstatement of their licenses may be given the opportunity to attend a conference concerning their driving record. Drivers must be advised of the driver improvement clinic and the fee for participation.

(e) Information regarding the fee for the driver improvement clinic is located in 19A NCAC 3B .0119.

*History Note: Statutory Authority G.S. 20-1; 20-16(c); 20-16(e);*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; October 1, 1982.*

### **.0402 INFORMATION**

Dates, locations, and places of clinics are available through the School Bus and Traffic Safety Section and are on file in the Commissioner of Motor Vehicles' Office for inspection and review during normal office hours.

*History Note: Statutory Authority G.S. 20-1; 20-16(c);*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991.*

## **SECTION .0600 - DRIVER EDUCATION PROGRAM**

### **.0601 DRIVER EDUCATION AND SAFETY PROGRAM INFORMATION**

(a) The School Bus and Traffic Safety Section provides a number of driver education programs, safety programs, work books and course materials, safety literature and safety films to interested groups. These materials are available on loan to groups that present the programs on their own or, upon request, a driver education specialist will present the program.

(b) Some of the courses offered are:

- (1) defensive driving course (National Safety Council);
- (2) presentations on general traffic safety subjects;
- (3) school bus passenger safety;
- (4) bicycle, mini-bike and pedestrian training;
- (5) basic driver education program.

(c) Information concerning course content, scheduling and an index of safety films (approximately 250 titles) is available from:

School Bus and Traffic Safety Section

Division of Motor Vehicles

1100 New Bern Avenue

Raleigh, North Carolina 27697.

*History Note: Statutory Authority G.S. 20-1; 20-3;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991; February 1, 1982.*

## **SUBCHAPTER 3H - GOVERNOR'S HIGHWAY SAFETY PROGRAM**

### **SECTION .0100 - PURPOSE OF THE OFFICE**

#### **.0101 FEDERAL HIGHWAY SAFETY ACT**

The Federal Highway Safety Act directs each state to have a highway safety program approved by the U. S. Secretary of Transportation and designed to reduce traffic crashes, deaths, injuries, and property damage. The program shall be in accordance with highway safety standards promulgated by the U.S. Secretary of Transportation. The governor of each state shall be responsible for the administration of the program through a state agency which shall have adequate powers, and be suitably equipped and organized to carry out the program to the satisfaction of the U. S. Secretary of Transportation.

*History Note: Statutory Authority 143B-360; 23 U.S.C. 402;*

*Eff. July 1, 1978;*

*Amended Eff. November 1, 1991.*

### **.0102 HIGHWAY SAFETY STANDARDS**

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The Federal Highway Safety Act directs the U.S. Secretary of Transportation to promulgate highway safety standards designed to improve driver and pedestrian performance, provide for an effective traffic records system, a method of crash investigation, vehicle registration, vehicle inspection, highway design and maintenance, traffic control, vehicle codes and laws, and emergency services. In compliance with this Act, the U.S. Department of Transportation has issued eighteen Federal Highway Safety Standards to ensure that states direct their highway safety efforts toward comprehensive goals and objectives.

*History Note:* Statutory Authority 143B-360; 23 U.S.C. 402;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.

### **SECTION .0200 - PROGRAM DEVELOPMENT**

#### **.0201 APPLICATION FOR HIGHWAY SAFETY PROJECT CONTRACT**

(a) State agencies and local governments desiring funding for a highway safety project, shall submit the required form.

(b) The Governor's Highway Safety Program will review the application for funding and determine if the proposed project will be funded through the Governor's Highway Safety Program. The following is the funding criteria:

- (1) eligibility of the project as determined by the Federal Highway Safety Standards;
- (2) project priority based upon the highway safety needs of North Carolina and the monies available for project funding;
- (3) the projected highway safety benefits to be realized from the project; and
- (4) the estimated project cost in relation to the proposed work to be accomplished, equipment purchased, and other costs.

(c) Following the Governor's Highway Safety Program review of the application, applicants will be notified of the results by a Governor's Highway Safety Program staff member.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

#### **.0202 LOCAL GOVERNMENT APPLICATION FOR SPEED MEASURING DEVICE**

#### **.0203 APPLICATION FOR ALCOHOL BREATH TESTING DEVICE**

*History Note:* Statutory Authority G.S. 143B-357; 143B-360;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.

#### **.0205 QUARTERLY PROGRESS REPORTS**

Project contractors, at the discretion of the Governor's Highway Safety Program, must submit progress reports at 90-day intervals. Projects not submitting progress reports within 15 days following the end of a quarter are subject to having reimbursements withheld until compliance is satisfactorily achieved.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

#### **.0206 TRAFFIC ENFORCEMENT ACTIVITY REPORT**

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.

#### **.0207 ON SITE PROJECT REPORT**

The Governor's Highway Safety Program, at its discretion, may perform quarterly on-site monitoring using the appropriate form.

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*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0208 FINAL ACCOMPLISHMENT REPORT**

Project contractors must submit a final accomplishment report on the appropriate form within 30 days of the termination of the contract unless otherwise directed. Failure to comply jeopardizes future funding and can result in withholding of reimbursement claims.

*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0209 APPLICATION FOR FEDERAL GRANT FOR AMBULANCE VEHICLE**

### **.0210 APPLICATION FOR FEDERAL GRANT FOR POLICE VEHICLE**

*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.*

### **.0211 AVAILABILITY OF GOVERNOR'S HIGHWAY SAFETY PROGRAM FORMS**

All of the Governor's Highway Safety Program forms cited under the rules in this Section are obtainable from the Office of Highway Safety Program at:

Motor Vehicles Building  
1100 New Bern Avenue  
Raleigh, N. C. 27697

Handy House  
215 E. Lane Street  
Raleigh, N.C. 27601

*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

## **SECTION .0300 - REIMBURSEMENT CLAIM PROCEDURES**

### **.0301 CLAIM FOR REIMBURSEMENT**

- (a) Project contractors' claims for reimbursement for a state government project or a local government project will be initiated by filing the appropriate Cost Summary Statement form.
- (b) Reimbursement of costs incurred by state or local personnel while attending schools or training courses directly contracted by the Governor's Highway Safety Program can be initiated by filing the appropriate summary statement form.

*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0302 SUPPORTIVE CLAIM**

All project contractors submitting claims for reimbursement must also furnish other supporting information as deemed necessary by the Governor's Highway Safety Program.

*History Note: Statutory Authority G.S. 143-129; 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.*

### **.0303 REQUEST FOR REIMBURSEMENT AUDIT**

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Project contractors submitting requests for reimbursement will be audited by a Department of Transportation Auditor before the Governor's Highway Safety Program reimburses the applicant agency.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

### **SECTION .0400 - NONEXPENDABLE EQUIPMENT**

#### **.0401 VERIFICATION OF ADHERENCE TO PURCHASING PROCEDURES**

Before obligating project funds to the purchase of any item requiring formal bids as cited by North Carolina General Statute, project contractor and the Governor's Highway Safety Program must agree on the intent of the project contractors regarding bid award. This intent must state in a letter and include the following attachments:

- (1) an excerpt showing book number and page number from the official minutes conducted by the government body authorizing the purchase of the item;
- (2) an excerpt from the official minutes which authorizes the advertisement for bids for the item, showing book number and page number;
- (3) one copy of the advertisement as run, showing name of newspaper and date;
- (4) one copy of each bid response.

*History Note:* Statutory Authority G.S. 143B-360; 143-129;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

#### **.0402 NONEXPENDABLE PROPERTY ACCOUNTABILITY RECORD**

Project contractors purchasing nonexpendable equipment must submit the necessary forms as directed by the Governor's Highway Safety Program with the claim of reimbursement.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

#### **.0403 DISPOSITION OF NONEXPENDABLE EQUIPMENT**

Project contractors disposing of nonexpendable equipment must request permission to do so on the appropriate form indicating the equipment and the method of proposed disposition.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

#### **.0404 STATUS OF NONEXPENDABLE EQUIPMENT**

Project contractors must submit reports of the status of nonexpendable equipment annually on the appropriate form.

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991; February 1, 1982.

### **SECTION .0500 - VEHICLE SPECIFICATIONS**

#### **.0501 POLICE VEHICLE SPECIFICATIONS**

#### **.0502 AMBULANCE SPECIFICATIONS**

*History Note:* Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.

**.0504 AMBULANCE VEHICLE INSPECTION**

*History Note: Statutory Authority G.S. 143B-360;  
Eff. July 1, 1978;  
Amended Eff. February 1, 1982;  
Repealed Eff. November 1, 1991.*

**SUBCHAPTER 3I - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTIONS**

**SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES: AND COURSES OF INSTRUCTION**

**.0302 OFFICE**

The office shall be the principal place of business, in the same location as but physically separated from the classroom facility, and must be sufficient for conducting all business related to the operation of the school including, but not limited to:

- (1) facilities for conducting personal interviews;
- (2) storage of all records required for the operation of the school;
- (3) secretarial or telephone answering service available for a minimum of six hours between 9:00 a.m. and 5:00 p.m. on normal business days;
- (4) a copy of North Carolina Motor Vehicle Laws Chapter 20.

*History Note: Statutory Authority G.S. 20-322 through 20-324;  
Eff. July 2, 1979;  
Amended Eff. November 1, 1991; June 1, 1982.*

**.0303 CLASSROOM FACILITY**

Classwork can only be conducted in locations approved by the Division of Motor Vehicles. The classroom facility shall meet the following minimum requirements:

- (1) a minimum overall size of not less than 120 square feet (which includes at least 70 square feet for the instructor and his equipment and at least 12 square feet for each student);
- (2) lighting, heating, and ventilation systems that are in compliance with all state and local laws and ordinances including, but not limited to, zoning, public health, safety, and sanitation;
- (3) seats and writing surfaces for all students; blackboards visible from all seats; charts, diagrams, mock-ups and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; a copy of the Driver's Handbook published by the Division for each student; and a textbook from the approved list for each student; and
- (4) restroom facilities sufficient for the class size must be provided.

*History Note: Statutory Authority G.S. 20-322 through 20-324;  
Eff. July 2, 1979;  
Amended Eff. November 1, 1991; April 1, 1989; June 1, 1982.*

**.0307 COURSES OF INSTRUCTION**

Commercial driver training schools are authorized to teach the following courses:

- (f) For unlicensed persons 18 years of age or older, a course as follows:
  - (a) Classroom Instruction. A minimum of six hours, including (but not limited to) rules of the road and other laws and regulations affecting the operation of motor vehicles, safe driving practices, pedestrian safety, and the general responsibilities of the driver.
  - (b) Behind-the-Wheel Instruction. A minimum of six hours, including instruction and practice in all the basic physical skills necessary for proper control of a motor vehicle in all normal driving situations, such as starting, stopping, steering and turning, controlling the vehicle in traffic, backing, and parking.
  - (c) A person holding a valid learner's permit issued by the Driver License Section of the Division shall not be required to take the six hours of classroom instruction set forth in Subparagraph (a) of this Paragraph.

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- (d) A person holding a valid learner's permit or driver's license issued by the Driver License Section of the Division may contract for any portion of the six-hour behind-the-wheel instruction.
- (2) For licensed persons a course for purposes of driver improvement, such as improving their knowledge and skill in the operation of a motor vehicle.
- (3) For unlicensed persons under the age of 18 years, a course which must be approved by the Commissioner and the State Superintendent of Public Instruction as follows:
- (a) Classroom Instruction. Does not include workbook assignments or other work out of the presence of an instructor. A minimum of 30 hours, consisting of instruction in:
- (i) highway transportation: its social and economic influences upon life in America;
  - (ii) drivers: their physical and mental characteristics and how their capabilities and limitations influence the traffic scene;
  - (iii) the automobile: its construction, maintenance, and safe operation;
  - (iv) traffic law and enforcement: laws of nature and man-made laws; and their relationship to traffic safety;
  - (v) pedestrians and bicycles: their influence upon the traffic scene; and
  - (vi) engineering: its influence upon automobiles, highways, traffic controls, and people.
  - (vii) driving while impaired; six hours of instruction on the effects of drinking upon driving and upon accident and death rates; and
  - (viii) rights and privileges of handicapped persons; their rights to use flags, placards, cards, license plates, and parking places.
- (b) Behind-the-Wheel Instruction. A minimum of six hours, actually under the wheel, including:
- (i) familiarization with the automobile; the use of its controls; and the development of skills essential to safe operation in traffic; and
  - (ii) driving in traffic with the instructor in a dual control car to develop abilities needed to follow the soundest course of action in responding to complex situations.
- (c) Restrictions:
- (i) Behind-the-Wheel instruction shall be offered to a student only after he has successfully completed the classwork section. If a student has contracted for both classwork and behind-the-wheel training, behind-the-wheel training may begin after classwork starts and before classwork has been completed. At no time should a student be taken out of class to attend behind-the-wheel training.
  - (ii) No student shall operate a motor vehicle upon any public street or highway unless such student shall have in his immediate possession a valid Restricted Instruction Permit issued by the Division.
  - (iii) No more than three hours of behind-the-wheel training shall be given in any one day. A written record indicating the date and time of this training should be kept on file for each student. The record must be signed by the student and not include observation of other students.
- (d) Other requirements:
- (i) Plans for the content of the curriculum, its organization, and presentation shall be submitted on Form SBTS-610 for the approval of the commissioner and the State Superintendent of Public Instruction. In addition, lesson plans for each of the 30 hours must be submitted. This course should meet the minimum requirements of the Driver Education Course (No. 881, see page 16) of the North Carolina Department of Public Instruction. For further information, see "Driver Education, A Manual for Instructors" (State Department of Public Instruction, Publication Number 288).
  - (ii) Textbooks for use in the classwork section are to be chosen from those approved by the State Superintendent of Public Instruction.
  - (iii) Instructors must be approved by both the Commissioner and the State Superintendent of Public Instruction.
  - (iv) All expenses incurred in offering and teaching these courses shall be paid by the persons enrolled therein or the school offering the course.
  - (v) A student may enroll for either the classroom work or behind-the-wheel instruction, or both. A school may accept certification of satisfactory completion of classroom instruction from any school authorized to offer such a course, provided the certificate (Form SBTS-611A) is signed by the principal of the public school, or the superintendent of the administrative unit of which it is a part, or the executive officer of a non-public secondary school. All SBTS-611A forms should be mailed or taken directly to the high school for completion by the commercial school owner or instructor. Under no circumstances should the form be given to the student.

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- (vi) Schools offering this course shall issue to their students upon satisfactory completion of either or both parts of the course a certificate furnished by the Division (Form SBTS-611). This certificate verifies only the training taught by the commercial school. The student's name on this certificate must be as it appears on his birth certificate. Schools shall be accountable to the Division for all certificates issued to them.
- (vii) The student, upon submitting certification of satisfactory completion of both parts of the driver education course, shall be eligible for licensing as provided by law. Such certification may be from either or both a public or non-public secondary school or a commercial driver training school.
- (viii) Schools shall submit reports to the Division, as may be required by the Division; and their books and records shall be open to inspection by Division representatives at all reasonable times.
- (e) A person satisfactorily completing the 30 and six hour course who desires additional training may contract for any portion of the six-hour behind-the-wheel instruction.
- (4) For licensed persons taking a course offered by a restricted commercial driver training school, the following courses are authorized:
  - (a) curriculum for evaluation and improvement for licensed adult drivers only, utilizing over-the-road observation in vehicles not owned by the school or equipment such as driving simulators;
  - (b) professional curricula, including one or more of the following:
    - (i) police pursuit driving;
    - (ii) auto-cross driving;
    - (iii) emergency-vehicle driving; or
    - (iv) road and track racing.
- (5) Instructor training program requirements:
  - (a) school must be licensed one full year prior to approval;
  - (b) all work must be with an instructor licensed as an Instructor Trainer;
  - (c) submit a proposed plan of operation outlining the training schedule, including:
    - (i) teaching methods,
    - (ii) writing lesson plans,
    - (iii) review of Rules and Regulations Governing the Licensing of Commercial Driver Training Schools and Instructors,
    - (iv) use of audio visual equipment and teaching aids,
    - (v) familiarization of commercial school forms, and
    - (vi) names of Instructor Trainers.

*History Note: Statutory Authority G.S. 20-322 through 20-324;*

*Eff. July 2, 1979;*

*Amended Eff. November 1, 1991; April 1, 1989;*

*May 1, 1987; March 1, 1984.*

### **SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR**

#### **.0501 REQUIREMENTS**

- (a) Each instructor of a commercial driver training school or branch shall:
  - (1) be of good moral character;
  - (2) have at least four years of experience as a licensed operator of a motor vehicle;
  - (3) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ten years immediately preceding the date of application;
  - (4) not have had a revocation or suspension of his driver's license in the four years immediately preceding the date of application;
  - (5) have graduated from high school or hold a high school equivalency certificate;
  - (6) not have had convictions for moving violations totaling seven or more points in the three years preceding the date of application;
  - (7) have completed the two-semester hour, college credit preparatory course for teachers; an equivalent course approved by the commission, or an Instructor Training Program conducted by an approved Commercial Driver Training School;
  - (8) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)

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- (9) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
  - (10) be given a three month probation period until evaluated and recommended by a Driver Education Specialist.
- (b) An applicant may apply for an instructor's learner's permit which would be valid for three months. To be eligible for an instructor's learner's permit, the applicant shall meet requirements in Paragraph (a) (1) through (6); and shall:
- (1) submit an Instructor Application with an eight dollar (\$8.00) application fee, copy of high school diploma or high school equivalency certificate, and physical examination form;
  - (2) successfully complete 40 hours of classwork as a student at an approved commercial driver training school to consist of:
    - (A) 30 hours in the basic driver education classwork;
    - (B) an additional 10 hours in practice teaching, writing lesson plans, review of Rules and Regulations Governing the Licensing of Commercial Driver Training Schools and Instructors, use of audio visual equipment and teaching aids and familiarization with commercial school forms;
  - (3) successfully complete six hours of behind-the-wheel training as a student at an approved commercial driver training school;
  - (4) successfully complete six hours of observation of behind-the-wheel instruction of a new driver by a licensed instructor trainer;
  - (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)
  - (6) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
  - (7) shall after completing Paragraph (b)(1) through (6) practice teach in the presence of an instructor trainer;
  - (8) successfully complete two hours of classroom instruction while being observed by a Driver Education Specialist;
  - (9) successfully complete two hours of behind-the-wheel instruction while being observed by a Driver Education Specialist;
  - (10) be recommended by a Driver Education Specialist to receive an instructor's license.

(c) An instructor at an approved commercial driver training school may apply for an Instructor Trainer license. The Instructor Trainer shall:

- (1) have five consecutive years as an active licensed instructor;
- (2) submit an application for Instructor Trainer License with a fee of eight dollars (\$8.00);
- (3) complete two hours of classroom observation by a Driver Education Specialist while training instructors, not driver education students;
- (4) complete two hours of behind-the-wheel observation by a Driver Education Specialist while training instructors, not driver education students;
- (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)
- (6) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
- (7) be recommended by a Driver Education Specialist;
- (8) must requalify each school year.

*History Note: Statutory Authority G.S. 20-322 through 20-324;*

*Eff. July 2, 1979;*

*Amended Eff. November 1, 1991; September 1, 1990;*

*April 1, 1989; February 1, 1988.*

## **CHAPTER 5 - ASSISTANT SECRETARY FOR MANAGEMENT**

### **SUBCHAPTER 5A - AUTOMATED DATA PROCESSING**

#### **.0002 FEE SCHEDULE**

The following fee schedule is in effect:

- (1) full file copy on continuous paper at fifty dollars (\$50.00) per one thousand records;
- (2) full file copy on magnetic tape at seven dollars (\$7.00) per one thousand records;

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- (3) selected listing on continuous paper [items listed in (2) through (6) of Rule .0001 of this Subchapter] at fifty dollars (\$50.00) per one thousand records, or a minimum charge of two hundred fifty dollars (\$250.00), whichever is greater;
- (4) selected magnetic tape copy [items listed in (2) through (6) of Rule .0001 of this Subchapter] at twenty dollars (\$20.00) per one thousand records, or a minimum charge of two hundred fifty dollars (\$250.00), whichever is greater.

*History Note:* *Statutory Authority G.S. 20-43; 20-50; 20-56;*  
*Eff. July 1, 1978;*  
*Amended Eff. November 1, 1991.*

### **SUBCHAPTER 5B - FISCAL**

#### **SECTION .0100 - ADMINISTRATION**

##### **.0101 FISCAL SECTION OPERATIONS**

The fiscal section operates under the Executive Budget Act and the Budget Manual of the Office of State Budget and Management (OSBM). The rules filed by OSBM control the operations of the fiscal section, except to the extent that the following rules within this Subchapter supplement those rules. Copies of the manual may be obtained from the Assistant Secretary for Administration for an established fee.

*History Note:* *Statutory Authority G.S. 143-1; 143-28; 143B-10; 143B-348;*  
*Eff. July 1, 1978;*  
*Amended Eff. November 1, 1991.*

##### **.0105 REMITTANCE FOR GROUP HEALTH INSURANCE COVERAGE**

The fiscal section does not accept personal checks in payment of premiums due from employees for group health insurance coverage. Payment, other than those handled on a payroll deduction basis, should be made by money order, cashier's check, certified check, or by personal delivery of cash to the insurance and compensation unit for which a receipt will be issued.

*History Note:* *Statutory Authority G.S. 143-2; 143B-10(j);*  
*Eff. July 1, 1978;*  
*Amended Eff. November 1, 1991.*

#### **SECTION .0200 - AUDITS OF CONTRACTING PARTIES**

##### **.0201 PRE-AUDIT: FINANCIAL CAPABILITIES**

All contracting firms, agencies, or recipients of grants or loans, except those whose contract was awarded as a result of the bidding process and those classified as local governments reporting under the Single Audit Act, who are entering into a contract or agreement with the Department of Transportation shall submit to the external audit branch of the Department of Transportation their current balance sheet, income statement, statement of net worth, chart of accounts, and any other data that may be determined to be necessary by the auditors, in order that the auditors may render an opinion as to whether the firm is financially capable of fulfilling the terms of the contract or agreement. The auditor's findings will be considered by the controller who, in conjunction with the Assistant Secretary for Administration, will report thereon to the appropriate contracting officer.

*History Note:* *Statutory Authority G.S. 143-2; 143B-10(j);*  
*Eff. July 1, 1978;*  
*Amended Eff. November 1, 1991.*

##### **.0202 PRE-AUDIT: ACCOUNTING SYSTEM**

All contracting firms, agencies, or recipients of grants or loans, except those whose contract was awarded as a result of the bidding process and those classified as local governments reporting under the Single Audit Act, shall submit their accounting systems to a review by the external audit branch of the Department of Transportation in order that the auditors may determine that the accounting system is capable of segregating and maintaining costs applicable to the contract, grant or loan.

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*History Note: Statutory Authority G.S. 143-2; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0205 WAIVER OF AIRPORT PRE-AUDIT**

### **.0206 INFORMATION IN LIEU OF AIRPORT PRE-AUDIT**

*History Note: Statutory Authority G.S. 143B-10(j); 113-28.10;  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

## **SECTION .0300 - ADOPTION OF FEDERAL POLICIES**

### **.0301 ADOPTION OF U.S.D.O.T. FEDERAL AUDIT GUIDELINES**

(a) In order to provide consistency and uniformity in the administration of all contracts, these the following guidelines including any subsequent amendments or editions of the same are hereby adopted and incorporated by reference pursuant to G.S. 150B-14(a) and (c) as rules of the North Carolina Department of Transportation to be used as audit guidelines on non-federally funded projects. Policies in effect on the date a contract is entered into will govern the contract for the duration of the contract. Copies of the below listed items are available for inspection in the Office of the Assistant Secretary for Administration.

(b) The guidelines hereby adopted are:

(1) Federal-Aid Highway Program Manual:

Volume	Chapter	Section	Subsection
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1	4	3	Reimbursement for railroad work -- Issued 8-5-88
1	4	5	Payroll and related expense of public employees; general administration and other overhead; and cost accumulation centers and distribution methods -- Issued 1-26-81
1	7	2	Administration of negotiated contracts -- Issued 1-21-80
4	1	2	Administration of highways planning projects -- Issued 11-5-86
6	6	3	Utility relocations, adjustments and reimbursements -- Issued 11-11-88

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(2) Code of Federal Regulations:	
Title 48 Part 31.2	Contracts with commercial organizations -- Issued 4-28-89
Title 49 Part 18	Uniform administrative requirements for grants and cooperative agreements with state and local governments (USDOT Common Rule) -- Issued 3-11-88
Title 23 Part 172	Administration of Engineering and Design related services contracts Issued 4-30-91
(3) Office of Management and Budget Circulars:	
OMB Circular A-21	Cost principles for educational institutions Issued 3-6-79
OMB Circular A-87	Cost principles for state and local governments Issued 1-1-81
OMB Circular A-102, Attachment A-0	Uniform administrative requirement for grants-in-aid to state and local governments Issued 1-1-81
OMB Circular A-102 (Revised)	Grants and cooperative agreements with state and local governments Issued 3-11-88
OMB Circular A-110	Grants and agreements with institutions of higher education, hospitals and other non-profit organizations Issued 7-1-76
OMB Circular A-122	Cost principles for non-profit organizations -- Issued 7-80
OMB Circular A-128	Audits of state and local governments -- Issued 4-12-85

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OMB Circular A-133	Audits of institutions of higher education and other non-profit organizations Issued 3-8-90
OMB Compliance Supplements	USDOT Programs only -- Issued 9-90
(4) Urban Mass Transportation Administration Circulars UMTA C 4220.1B	Third party contracting guidelines -- Issued 5-5-88
UMTA C 5700.1	Requirements and responsibilities for indirect cost proposals/cost allocation plans for technical studies and capital grants Issued 5-24-83
UMTA C 7005.1	Documentation of private enterprise participation required for Section 3 & 9 programs -- Issued 12-5-86
UMTA C 7010.1	Capital cost of contracting -- Issued 12-5-86
(5) Department of Treasury Circular: Circular 1075.1 Part 205	Withdrawal of cash from the Treasury for advances under Federal grant and other programs -- Issued 10-14-77
(6) Federal Single Audit Act:	Issued 10-11-84
(7) North Carolina Single Audit Implementation Act:	Issued 1987
(8) State Compliance Supplements	NCDOT Program only - Issued for FY 90/91
(9) NCDOT Rules and Regulations for Major Professional or Specialized Contracts	

*History Note: Statutory Authority G.S. 143B-10; 143B-348;*

*Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

**.0302 ADOPTION OF FEDERAL AUDIT GUIDELINES  
.0303 ADOPTION OF U.M.T.A AUDIT GUIDELINES**

*History Note: Statutory Authority G.S. 143B-10(j);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

**SECTION .0500 - MOVING PROCEDURES**

**.0501 MOVING POLICY**

(a) The Department of Transportation will pay an employee's moving expenses when a change of residence is deemed to be in the best interest of the department, and when such a change is required as a result of a promotion or by a change in assignment involving a transfer of the employee for the advantage and convenience of the department, and the new duty station is 35 miles or more from the employee's existing (or prior) duty station.

(b) The Department of Transportation adheres to the policy for employee's moving expenses established by the Office of State Budget and Management, except as modified as follows:

(1) The mover is to return his completed bid to the employee.

(2) The department does not advance the employee any money for moving expenses, rather the department has elected to issue a purchase order for the move and will make payment directly to the mover upon completion of the move.

*History Note: Statutory Authority G.S. 143-2; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

**.0502 MOVING POLICY: MOVING PACKET**

**.0503 MOVING POLICY: AUTHORIZATION TO MOVE FORM (601-EXP)**

*History Note: Statutory Authority G.S. 143-2; 143B-10(j);  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

**CHAPTER 6 - ASSISTANT SECRETARY FOR PLANNING**

**SUBCHAPTER 6B - PUBLIC TRANSPORTATION AND RAIL PROGRAM**

**SECTION .0100 - GENERAL PROVISIONS**

**.0102 LEAD STATE AGENCY**

**.0103 DIRECTOR OF PUBLIC TRANSPORTATION**

*History Note: Statutory Authority G.S. 136-44.20;  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1991.*

**SECTION .0200 - TECHNICAL ASSISTANCE**

**.0203 ASSISTANCE IN CONDUCTING PLANNING AND MANAGEMENT STUDIES**

Eligible public agencies may receive assistance on technical matters during the conduct of public transportation planning and management studies. Requests for assistance shall be made to the Department of Transportation prior to the start of the study and the requests shall state the nature of the technical assistance. The offer of assistance is made contingent upon the availability of staff.

*History Note: Statutory Authority G.S. 136-44.20;  
Eff. July 1, 1978;*

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*Amended Eff. November 1, 1991.*

### **.0204 ASSISTANCE IN OPERATIONAL TECHNIQUES**

Eligible public agencies may receive advice on administrative and operational aspects of public transportation systems that have received state or federal financial assistance. Requests for assistance shall be made in writing to the Department of Transportation stating the nature of the assistance. The offer of assistance is made contingent upon the availability of staff.

*History Note: Statutory Authority G.S. 136-44.20; 49 U.S.C. 1602;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0205 ASSISTANCE IN TRAINING ACTIVITIES**

Eligible agencies may receive training assistance on operational and administrative aspects of public transportation systems. Requests for assistance shall be in writing to the Department of Transportation stating the nature of the assistances. The offer of assistance is made contingent upon the availability of staff.

*History Note: Statutory Authority G.S. 136-44.20;  
Eff. November 1, 1991.*

## **SECTION .0300 - FINANCIAL ASSISTANCE**

### **.0302 FINANCIAL ASSISTANCE FOR PLANNING AND MANAGEMENT**

Eligible agencies may receive state and/or federal funds for the planning, management, engineering, design, and evaluation of public transportation projects. Requests for state financial assistance shall be made in writing to the Department of Transportation.

*History Note: Statutory Authority G.S. 136-44.20; 143B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0303 FINANCIAL ASSISTANCE FOR CAPITAL IMPROVEMENTS**

Eligible agencies may receive state and federal financial assistance in financing the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in public transportation services. Requests for state and federal financial assistance shall be made in writing to the Department of Transportation.

*History Note: Statutory Authority G.S. 136-44.20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0304 FINANCIAL OPERATING ASSISTANCE**

Eligible agencies may receive state and federal financial assistance in financing either the operation of public transportation service or projects of limited duration which demonstrate innovative approaches in the provision of local or area-wide public transportation services. Requests for state and federal financial assistance shall be made in writing to the Department of Transportation.

*History Note: Statutory Authority G.S. 143B-10(j); 136-44.20; 49 U.S.C. 1604;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

## **SUBCHAPTER 6C - DIVISION OF AERONAUTICS**

### **SECTION .0100 - FACILITY DEVELOPMENT - FINANCIAL ASSISTANCE PROGRAM: GENERAL PROVISIONS**

### **.0107 RETROACTIVE REIMBURSEMENT**

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In its discretion, the Department may grant state financial assistance for any construction commenced prior to the execution of a State Aid to Airports Grant Agreement, provided that concurrence is received from the Department prior to the start of construction. Retroactive reimbursement for land acquisition and planning will be eligible for a period of time consistent with policies and standards of the Federal Aviation Administration.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0109 PROJECT APPLICATION PROCEDURES**

(a) Allocations under the State Aid to Airports Program are reviewed by the Aeronautics Council and approved by the Secretary of Transportation as part of the Transportation Improvement Program (TIP). The Aviation Element of the TIP is a five year allocation of funds for specific projects and grant amounts. The first year of the program is a firm commitment of expenditures based upon Legislative approval. The remaining four years of the program represent tentative allocations for planning purposes and are subject to revision based upon actual Legislative allocations for State Aid to Airports.

(b) Sponsors are encouraged to submit proposed projects as part of the TIP formulation process which begins each Spring. The Aviation Element of the TIP is finalized following Legislative approval of allocations for State Aid to Airports. Proposed projects which are submitted outside of the TIP formulation process may not receive consideration until the next year's formulation is underway.

(c) Applications for State Aid to Airports shall be made on the approved Request for Aid Form to the Director of Aeronautics. Applications shall contain:

- (1) an executed state financial assistance Request for Aid Form,
- (2) a current airport layout plan depicting the proposed project,
- (3) a detailed cost estimate showing construction quantities and their costs, and
- (4) a narrative statement outlining the facts about the project and giving the sponsor's rationale for its need.

*History Note: Statutory Authority G.S. 63-66; 63-70; 143B-350(f),(g); 143B-355;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0110 ENVIRONMENTAL ASSESSMENT**

Under the provisions of the North Carolina Environmental Policy Act, each State Aid to Airports project shall be reviewed to determine if, and to what degree, assessment of the environmental impact of the project is required. The Director of Aeronautics will determine if the project requires full environmental assessment and coordination. Should environmental assessment be necessary, the sponsor shall prepare an assessment and circulate it to state agencies through the State Clearinghouse and to appropriate federal agencies through direct submission. The sponsor shall then answer all substantive questions and comments and receive the concurrence of the commenting agency that the responses are acceptable. Upon submission of the assessment and all comments, the Director of Aeronautics will complete any further review and approvals needed. The Secretary of Transportation will then determine if State funds may be expended on the project within the provisions of the North Carolina Environmental Policy Act.

*History Note: Statutory Authority G.S. 63-66; 63-68; 113A-4; 143B-350(f),(g);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1991.*

### **.0112 ALLOWABLE PROJECT COSTS**

Eligible items of work and state funds amounts will be stipulated in the Grant Agreement mutually executed by the Department and the sponsor. Allowable project costs and detailed eligibility of work elements are contained in the current issue of the "State Aid to Airports Program Guidance Handbook" which is incorporated by reference into the Grant Agreement and made a part of the project procedures.

*History Note: Authority G.S. 63-66; 63-67; 63-68;  
Eff. July 1, 1978;*

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*Amended Eff. November 1, 1991; March 1, 1982.*

### **.0123 SPONSOR CERTIFICATION OF LOCAL MATCHING FUNDS**

It is the policy of the Department that allocations of State Aid to Airports funds be made only for current projects which can get underway without delay. Sponsors requesting funds should have the local matching funds in their approved budget or be able to approve the funds on an immediate basis. Upon arrival of a State Aid to Airports allocation and its placement in the TIP, the sponsor shall have a limited amount of time, but no less than 60 calendar days to certify the availability of the local share of funds for the project. Failure to certify funds availability on a timely basis may result in the cancellation of the allocation by the Department.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

### **.0124 LIMITS ON USE OF ALLOCATED FUNDS**

Allocation of state funds for a State Aid to Airports project is on the basis of a specific amount of funds for a specific work element. If all approved funds are not needed for the approved work element the excess funds will be returned to the State Aid to Airports Program unobligated balance. Sponsors may not expect to transfer current funds to other work elements unless the transfer has been reviewed and approved by the Department. Such approval will be made only after application of the State Aid to Airports priority system and the project is of sufficiently high priority compared to other pending project requests.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

### **.0125 TIME LIMITS ON CONSTRUCTION OF THE PROJECT**

It is the policy of the Department that all projects receiving State Aid to Airports get underway and be completed without undue delay. The Grant Agreement for the project will stipulate the completion time expected for the project. The Agreement will normally provide at least one year from the time of the offer of the Grant Agreement to undertake and complete the project. In most cases, the maximum time allowed will be two years, unless the project involves complex procedures for which additional time is normally needed. Failure to complete the project within the stipulated time period may be cause for cancellation of the project.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

### **.0126 REQUEST FOR EXTENSION OF TIME TO COMPLETE PROJECT**

In the event a project is not completed within the stipulated time frame as contained in the Grant Agreement, no state funds will be granted for work completed after the completion date. On a case by case basis, the time for completion may be extended if extenuating circumstances prevent the sponsor from completion by the date specified. In order to extend the time for completion, the sponsor must submit a written request for time extension in the format specified by the Department explaining in detail the reason why the project was not completed by the specified completion date. In its discretion, the Department may approve the extension and specify a new completion date. Only under extraordinary circumstances will more than one time extension be granted on the same project.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

### **.0127 SANCTIONS FOR NON-PERFORMANCE ON STATE AID PROJECTS**

In the event a sponsor is not responsible to requests to complete a project, provide financial documentation, has a pending required refund on another project, or otherwise is grossly deficient in the conduct of a project, the Department reserves the right to withhold new grants or suspend existing grants until the project deficiency has been corrected.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

**.0128 STATE AID TO AIRPORTS PROGRAM GUIDANCE HANDBOOK**

Current procedures, description of eligible items, and supporting information for the conduct of State Aid to Airports Projects is contained in the "State Aid to Airports Program Guidance Handbook". The Handbook is available from the Department upon request. The Handbook will be updated periodically so users should confirm that they have the current edition.

*History Note: Statutory Authority G.S. 63-66; 63-68;  
Eff. November 1, 1991.*

**.0129 DEPARTMENT TO ACT AS AGENT FOR FEDERAL GRANT PROGRAMS**

The Department is authorized under the provisions of North Carolina GS 63 to act as an agent for sponsors in their relations with the Federal Aviation Administration and other federal agencies. Sponsors which wish to have the Department act in their behalf should submit a written proposal detailing the type of assistance desired and the proposed role of the Department in obtaining this assistance. The proposal should be submitted to the Director of Aeronautics.

*History Note: Statutory Authority G.S. 63-66; 63-71;  
Eff. November 1, 1991.*

**.0130 FEDERAL FLOW THROUGH FUNDING PROGRAMS**

For Fiscal Years 1990, 1991, and 1992 the Department has participated in the federal "State Block Grant Pilot Program". Under the terms of this program, federal funds for general aviation and reliever airports in North Carolina are provided to the Department, which is then responsible for determining the recipients of grant funds and administering the funding program. In general, federal flow through funding projects will be handled as nearly like State Aid to Airports projects as possible, though additional steps and or certifications may be needed to meet specific federal requirements.

*History Note: Statutory Authority G.S. 63-66; 63-71;  
Eff. November 1, 1991.*

**.0131 STATE/FED PARTICIPATION RATES/FED FLOW THROUGH FUND PROGRAMS**

Many federal flow through funding programs allow discretion on the part of the Department to set the federal funding share. For the State Block Grant Pilot Program, the federal funding share has been set at 80 percent of the final, eligible project costs. State shares will correspond to those authorized under GS 63.

*History Note: Statutory Authority G.S. 63-66; 63-71;  
Eff. November 1, 1991.*

**.0132 PROCUREMENT OF CONSULTANTS FOR ENGINEERING SERVICES**

North Carolina General Statute 143 specifies that, except under specific circumstances, engineering consultants shall be selected only on the basis of qualifications and that price shall not be a factor in this selection. No state funds will be provided for any engineering services not procured in accordance with GS 143.

*History Note: Statutory Authority G.S. 63-66;  
Eff. November 1, 1991.*

**.0133 PROHIBITION/CONTRACTORS REMOVED/DIV HWYS PRE-QUALIFIED BIDDERS**

Contractors for State Aid to Airports projects are not required to be pre-qualified through any procedure of the Department. However, it is the policy of the Department not to approve contractors on State Aid to Airports projects who have been removed from the Division of Highways pre-qualified bidder's list for cause without subsequent reinstatement. It shall be the responsibility of the sponsor and its consultant to advise potential bidders of this policy and to insure that contracts are not awarded to contractors who have been disqualified from bidding on other programs of the Department.

*History Note: Statutory Authority G.S. 63-66;  
Eff. November 1, 1991.*

**.0134 HOSPITAL HELIPORTS**

A hospital heliport will be eligible for State Aid to Airports provided it is made available to the general public for use without undue restriction. Hospital heliports which are restricted to medical helicopter operations will be considered to be private facilities and are not eligible for State Aid to Airports.

*History Note: Statutory Authority G.S. 63-66;  
Eff. November 1, 1991.*

**SECTION .0700 - STATE AIRPORTS**

**.0703 TRESPASS ON STATE AIRPORTS**

No person shall enter upon the runway(s), taxiway(s), aircraft parking apron(s), building(s), or adjacent areas unless that person is a pilot, aircraft owner, passenger, or other person who has business on the airport directly related to the provision of air transportation services.

*History Note: Statutory Authority G.S. 63-72;  
Eff. November 1, 1991.*

**.0704 PROHIBITION AGAINST GROUND VEHICLES ON STATE AIRPORTS**

No person shall operate a ground vehicle on the runway(s), taxiway(s), aircraft parking apron(s), or adjacent areas unless prior permission has been obtained from the Director of Aeronautics.

*History Note: Statutory Authority G.S. 63-72;  
Eff. November 1, 1991.*

**.0705 CLOSURE OF STATE AIRPORTS DURING HOURS OF DARKNESS**

The Billy Mitchell Airport at Frisco, NC and the Ocracoke Island Airport at Ocracoke, NC are closed to all flight operations between a time beginning 30 minutes after civil sunset and extending to a time ending 30 minutes prior to civil sunrise.

*History Note: Statutory Authority G.S. 63-72;  
Eff. November 1, 1991.*

**.0706 COMMERCIAL FLIGHT OPERATIONS PROHIBITED WITHOUT APPROVAL**

No person shall base or otherwise conduct commercial aeronautical activities from a state airport without the permission of the Director of Aeronautics. With regard to the Billy Mitchell Airport at Frisco, NC and the Ocracoke Island Airport at Ocracoke, NC, any such commercial operations shall also require the approval of the National Park Service operating through the Cape Hatteras Management Group in Manteo, NC.

*History Note: Statutory Authority G.S. 63-72;  
Eff. November 1, 1991.*

## ***RRC OBJECTIONS***

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

*Temporary Rules are noted by “\*”. These Rules have already gone into effect.*

### **ADMINISTRATION**

#### State Construction

<i>1 NCAC 30F .0101 - Authority</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0103 - Definitions</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0301 - Definitions</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0305 - Report Compilation</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation</i>	<i>RRC Objection</i>	<i>10 17,91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding</i>	<i>RRC Objection</i>	<i>10 17,91</i>

### **AGRICULTURE**

#### Plant Industry

<i>2 NCAC 48E .0101 - Definitions</i>	<i>RRC Objection</i>	<i>10 17,91</i>
---------------------------------------	----------------------	-----------------

### **ECONOMIC AND COMMUNITY DEVELOPMENT**

#### Employment and Training

<i>* 4 NCAC 20B .0903 - Allocation of Grants No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>
<i>* 4 NCAC 20B .0905 - Eligibility No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>
<i>* 4 NCAC 20B .0907 - Cost Limitations Categories No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>
<i>* 4 NCAC 20B .0908 - Reporting No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>
<i>* 4 NCAC 20B .0909 - Performance Standards No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>
<i>* 4 NCAC 20B .0911 - Fund Availability No Response from Agency</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>

### **EDUCATION**

#### Elementary and Secondary Education

<i>16 NCAC 6B .0001 - School Bus Drivers</i>	<i>ARRC Objection</i>	<i>9 19 91</i>
<i>16 NCAC 6D .0103 - Graduation Requirements</i>	<i>ARRC Objection</i>	<i>9 19 91</i>
<i>* 16 NCAC 6E .0301 - Driver Training Agency Responded</i>	<i>ARRC Objection</i>	<i>8 22 91 9 19 91</i>

### **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

#### Adult Health

## ***RRC OBJECTIONS***

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<i>15A NCAC 16A .0804 - Financial Eligibility</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Responded</i>		<i>3/21/91</i>
<i>No Response from Agency</i>		<i>4/18/91</i>
<i>15A NCAC 16A .0806 - Billing the HIV Health Services Program</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Responded</i>		<i>3/21/91</i>
<i>No Response from Agency</i>		<i>4/18/91</i>
<b>Coastal Management</b>		
<i>15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>15A NCAC 7J .0302 - Petition for Contested Case Hearing</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0201 - Declaration of General Policy</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0202 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0303 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0403 - Policy Statements</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 7M .0901 - Declaration of General Policy</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<b>Environmental Management</b>		
<i>15A NCAC 2D .1102 - Applicability</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>15A NCAC 2D .1208 - Operator Training Requirements</i>	<i>No Action</i>	<i>9/19/91</i>
	<i>ARRC Objection</i>	<i>8/22/91</i>
	<i>No Action</i>	<i>9/19/91</i>
<b>Forest Resources</b>		
<i>15A NCAC 9C .1007 - America the Beautiful Grant Program</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<b>Health: Epidemiology</b>		
<i>15A NCAC 19A .0202 - Control Measures - HIV</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<b>Wildlife</b>		
<i>15A NCAC 10A .1001 - Particular Offenses</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<b>HUMAN RESOURCES</b>		
<b>Aging</b>		
<i>10 NCAC 22M .0101 - Scope of Care Management</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0103 - Target Population</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0203 - Assessment and Reassessment</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0204 - Care Planning</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0101 - Definitions for Confidentiality of Client Data</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0205 - Security of Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0208 - Client Access to Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<b>Children's Services</b>		
<i>10 NCAC 411 .0406 - Responsibility for Training of Team Members</i>	<i>ARRC Objection</i>	<i>7/18/91</i>

## ***RRC OBJECTIONS***

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Pending Correction

8/22/91

Economic Opportunity

- \* 10 NCAC 51F .0102 - Definitions  
No Response from Agency
- \* 10 NCAC 51F .0202 - Ineligible Activities  
No Response from Agency
- \* 10 NCAC 51F .0402 - Eligibility Requirements  
No Response from Agency
- \* 10 NCAC 51F .0501 - Grant Agreement  
No Response from Agency

ARRC Objection 8/22/91  
9/19/91  
ARRC Objection 8/22/91  
9/19/91  
ARRC Objection 8/22/91  
9/19/91  
ARRC Objection 8/22/91  
9/19/91

Facility Services

- 10 NCAC 3J .2905 - Personal Hygiene Items
- 10 NCAC 3U .0604 - General Safety Requirements  
Agency Revised Rules
- 10 NCAC 3U .0804 - Infectious and Contagious Diseases  
Agency Revised Rules

RRC Objection 10/17/91  
ARRC Objection 8/22/91  
Obj. Removed 9/19/91  
ARRC Objection 8/22/91  
Obj. Removed 9/19/91

Medical Assistance

- 10 NCAC 2611 .0108 - Reimbursement Methods/State-Operated Facilities
- 10 NCAC 50B .0305 - Deprivation  
Agency Revised Rule

RRC Objection 10/17/91  
ARRC Objection 8/22/91  
Obj. Removed 8/22/91

Mental Health: General

- 10 NCAC 14K .0103 - Definitions  
Agency Revised Rule
- 10 NCAC 14K .0320 - Incident Reporting  
Agency Revised Rule
- 10 NCAC 14K .0337 - Emergency Care Permission  
Agency Revised Rule
- 10 NCAC 14K .0351 - Administration of Medication  
Agency Revised Rule
- 10 NCAC 14M .0206 - Day Services  
Agency Revised Rule
- 10 NCAC 14M .0209 - Community Resources  
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- 10 NCAC 14R .0104 - Seclusion Restraint/Isolation Time Out  
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- 10 NCAC 14R .0105 - Protective Devices  
Agency Revised Rule

ARRC Objection 9/19/91  
Obj. Removed 9/19/91  
ARRC Objection 9/19/91  
Obj. Removed 9/19/91



***RRC OBJECTIONS***

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Certified Public Accountant Examiners

\* 21 NCAC 8G .0313 - Firm Name

*RRC Objection 10/17/91*

Practicing Psychologists

21 NCAC 54 .1701 - Information Required  
Agency Revised Rule

*ARRC Objection 8/22/91*  
*Obj. Removed 9/19/91*

21 NCAC 54 .2103 - Reinstatement  
Agency Revised Rule

*ARRC Objection 8/22/91*  
*Obj. Removed 9/19/91*

## **RULES INVALIDATED BY JUDICIAL DECISION**

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*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

### **15A NCAC 21D .0802(b)(2) - AVAILABILITY**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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Note: Title 21 contains the chapters of the various occupational licensing boards.

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